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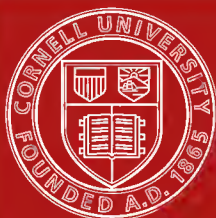
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DOCUMENTS

OF

THE CONSTITUTION

OF

ENGLAND AND AMERICA,

FROM MAGNA CHARTA

TO THE FEDERAL CONSTITUTION OF 1789.

COMPILED AND EDITED, WITH NOTES,

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IN HARVARD COLLEGE.

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P R E F A C E .

WHILE teaching the elements of Constitutional History and Law to successive classes in college, I have felt the want of a little manual, which should present in a form convenient for reference, the text, not only of our own national Constitution, but of those state documents, whether pertaining directly to the history of England or of America, upon which some of the most important features of our Constitution are based, and from which, both in the spirit and the letter, it may be said to derive its parentage. The word *Constitution*, in its largest sense, properly signifies the aggregate of those fundamental laws, institutions, and usages, which make up the whole polity of a state. It is too extensive, therefore, to be accurately described and defined in a single written instrument; a great portion of it is unwritten, forming a body of consuetudinary law, which is equally valid with those other portions that have been specially recognized and enacted, or re-enacted rather, by the supreme legislature. What is usually termed the Constitution in this country, whether it be the Federal Constitution of the whole Union, or the separate Constitution of each State, is but a part, and a small part, of the fundamental law under which we live. Still more; these two specific constitutions are not, to any great extent, original and fresh enactments, first devised and first made binding when these were put together and formally accepted by the people about three quarters of a century ago. Many of the most important provisions in them constitute the original inheritance of the American people, which they brought over with them from England, which have always been in force among them, and which would have continued in force even if what we now call the National and the State

Constitutions had never been invented. The trial by jury, the leading forms of representative government, the law of evidence, the definition of treason, murder, and other crimes, the distribution of local government between counties and towns, the powers and functions of justices of the peace, and many other particulars that might be enumerated, have been a portion of American law ever since the first settlements were formed at Jamestown and Plymouth. They have not undergone any greater alteration here than in England. The object of the American Revolution was not to subvert, but to defend them. Some of them were specifically re-enacted in the written Constitutions that were framed after the establishment of our independence, as if to mark their importance and the measure of the people's attachment to them. But the re-enactment was a mere form, an act of supererogation; they would have continued in force without it. Thus the Constitution of the United States provides, that "no State shall pass any law impairing the obligation of contracts," and that "private property shall not be taken for public use without just compensation"; and there are similar provisions in most of the State Constitutions. But it has been further decided in our courts, that an act of a Colonial legislature, passed long before these Constitutions were in being, which took away the freehold of one man and vested it in another without compensation, was null and void, "as being against common right and the principles of Magna Charta." Chancellor Kent remarks, that the court "declared the act to be *ipso facto* void, and that no length of time could give it validity. This was not strictly a question arising upon any special provision of the State Constitution; but the court proceeded upon those great fundamental principles which support all government and property, and which have been supposed by many judges in England to be sufficient to check and control the regulations of an act of Parliament."*

According to the view here taken, there has been a gradual accretion and development of the elements of the English and the American Constitutions. They had a common origin in the usages of the Anglo-Saxons, in the principles of the feudal system as introduced by the Normans, and in the charters which the spirit of the English barons and the

* Kent's *Commentaries*, I. 451.

English people compelled the Plantagenet kings to grant. They have a common history down to the period of the enactment of the Petition of Right and the settlement of New England. Since that time, their progress has been in different but parallel lines of development. The English Constitution ripened at the Revolution of 1688, in the Declaration and the Bill of Rights, which established the doctrine that the crown is held only by the will of Parliament, and for the sake of the ancient liberties of the people; and there has been no material change in it since that period, as even the Reform Bill of 1832 was not so much a new recognition and guaranty of popular rights as a restoration of the old Constitution, the proper balance of representative power in it having been greatly impaired by the lapse of time and the movement of the population. The American Constitution culminated in the Declaration of Independence and the formation of what is called the Federal Constitution, which consolidated the union of the States. The American Revolution was but one step, though a very important one, in a long series of changes or processes through which this Constitution has been formed. Many of the institutions under which we now live may be traced back to the ancient muniments of English freedom, — to the Great Charter, the Confirmation of the Charters, the Statute of Treasons, the Petition of Right, &c.

An important lesson, as it seems to me, is to be derived from this view of the gradual development of our constitution. It is, that constitutions are not made, but they grow by an inherent law of progress and adaptation to changing circumstances. They are not contrivances of human wisdom, but are necessary products of men's habits and wants. English institutions transplanted to an American soil grew up naturally into a republican form of government; while the same institutions, continuing on English ground, were developed just as naturally into the aristocratic limited monarchy which still subsists there, though the infusion of the popular element into it is daily increasing. In France, on the other hand, an attempt has been repeatedly made to sweep away every vestige of the old form of government, and, on the *tabula rasa* thus formed, to build up a polity entirely new, constructed on theoretical principles, and with due attention to artistic unity and symmetry of plan. But

the result of each of these attempts has been a disastrous failure. So it must ever be. Institutions which have no root in the soil, no hold on the previous habits, associations, and affections of the people, will be prostrated by the first blast.

The documents contained in this volume have been brought together to illustrate the rise and progress of the English and the American Constitutions, — to show what they are, and how they became what they are. They bear an obvious relation to each other, and mark the successive epochs in the progress of the liberty and the development of the political institutions of the English race. Some knowledge of them appears to be requisite for a proper understanding, not only of the origin and the history, but of the meaning and spirit, of the forms of government which are established in England and this country, and for a proper comparison of these forms with each other. In the notes and introductions, I have endeavored to give, as briefly as possible, the necessary collateral information to make the text intelligible even to young students, leaving all the historical particulars, however, to be learned from the ordinary works upon the history of the two countries.

The Great Charter is the only document in this collection which needs much annotation. Though the original Latin of this famous instrument has been repeatedly edited with great care, and published in fac-simile, I could not find any good English version of it, or any commentary upon it suited for unprofessional students. The copy which is prefixed to the Statutes at Large is a translation of the Great Charter of Henry III., which differs in several important respects from that of John, and is also inferior to its predecessor in historical interest. It does not contain, for instance, the article directing how the Great Council shall be brought together to authorize the assessment of scutages. But it was directly confirmed by Parliament, while the Charter of John was never sanctioned by the formal consent of the three estates of the realm. Henry's Charter is therefore still in force, as a portion of the existing law, and is consequently printed in the general collection of the Statutes; while its great original, of which in truth it is only a maimed and defective copy, has no legal validity, and is an object of interest merely to the historical inquirer and the student of political science. The only annotated ver-

sion of King John's Magna Charta which I had seen when this collection was begun, is a very imperfect one in Rapin's History of England; it is awkward and inelegant in expression, and on being compared with the original, it appears both incorrect and defective. I have revised and almost entirely rewritten it, using for this purpose the translation of Henry the Third's Charter as printed in the Statutes at Large, the Latin text as it appears in one of Blackstone's Law Tracts, and that also which is contained in the recent and very correct edition of Rymer's *Fœdera*, for which we are indebted to the Record Commission.

Neither Professor Creasy's "Text-Book," nor his "Rise and Progress of the English Constitution," was seen by me till the first half of this volume was in print, or I should have adopted his excellent translation of the Charter. But I have been gratified to find that his version agrees in every important respect with my own, and that he has adopted in his commentary the same general views of the character and meaning of the various clauses. The object of the notes here given is only to render the text intelligible, by explaining those technical peculiarities of the Feudal System which it is the glory of the Great Charter to have removed or mitigated.

This volume is not designed for separate use, as a manual of instruction, but as the natural accompaniment of any text-book on the Constitutional History or Constitutional Law of England and America; or it may serve as a kind of syllabus to a course of lectures upon these two subjects. I have found the need of such a collection for both these purposes, and have compiled it merely for my own occasions; but I hope it may also prove serviceable to other instructors.

CAMBRIDGE, *April* 18, 1854.

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THE
CHARTER OF LIBERTIES,

OR

THE GREAT CHARTER,

GRANTED BY KING JOHN TO HIS SUBJECTS ON THE 15TH DAY OF JUNE,
A. D. 1215.

JOHN, by the grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Earl of Anjou: to the archbishops, bishops, abbots, earls, barons, justiciaries, foresters, sheriffs, governors, officers, and to all bailiffs and his other faithful subjects, greeting. Know ye, that we, in the presence of God, and for the health of our soul and the souls of all our ancestors and heirs, and to the honor of God and the exaltation of Holy Church, and the amendment of our kingdom, by advice of our venerable fathers, Stephen, Archbishop of Canterbury, Primate of all England and Cardinal of the holy Roman Church; Henry, Archbishop of Dublin, William, Bishop of London, Peter, of Winchester, Jocelin, of Bath and Glastonbury, Hugh, of Lincoln, Walter, of Worcester, William, of Coventry, Benedict, of Rochester, Bishops; and master Pandulph, the Pope's subdeacon and ancient servant, brother Aymerick, Master of the Temple in England, and the noble persons, William Marescall, Earl of Pembroke, William, Earl of Salisbury, William, Earl of Warren, William, Earl of Arundel, Alan de Galoway, Constable of Scotland, Warin Fitz Gerald, Peter Fitz Herebert, and Hubert de Burghe, Seneschal of Poictou, Hugo de Nevill, Mathew Fitz Herebert, Thomas Basset, Alan Basset, Philip de Albine, Robert de Roppele, John Marescall, John Fitz Hugh, and others our liegemen; have, in the first place,

granted to God, and, by this our present charter, have confirmed for us and our heirs for ever : —

I. That the Church of England shall be free, and shall have her whole rights and liberties inviolate. And we will have them so to be observed ; which appears from hence, that the freedom of elections,* which is reckoned the greatest and most necessary liberty for the Church of England, of our own free will and pleasure we granted and confirmed by our charter, and obtained its confirmation from Pope Innocent the Third, before the discord arose between us and our barons ; which charter we shall observe, and we will it to be faithfully observed by our heirs for ever.

II. We have also granted to all the freemen of our kingdom, for us and our heirs for ever, all the underwritten liberties, to have and to hold to them and their heirs, of us and our heirs.

III. If any of our earls, or barons, or others who hold of us in chief by military service,† shall die, and at the time of his death

* “ According to the primitive custom of the Church,” says Mr. Hallam, “ an episcopal vacancy was filled up by election of the clergy and people belonging to the city or diocese.” In such an election, of course, the clergy soon contrived to take a leading part, and the choice was virtually in their hands. But when much political power and large landed possessions were annexed to the bishoprics, the king naturally claimed a voice in the nomination to an office which gave its possessor so much influence in the state. Though the clergy might confer the spiritual power, the temporalities of the see were asserted to be the gift of the king alone. But the Pope and the clergy steadfastly resisted this pretension ; and the dispute which thus arose out of the conflicting claims of the crown and the Church was a leading cause of the numerous disorders of King John’s reign. This weak and wicked monarch was overmatched by the able and imperious Innocent III., under whom the papal power culminated in Europe. John was obliged to yield everything ; and then, Langton, Archbishop of Canterbury, and Pandulph, the Pope’s legate, who had been the chief instruments in forcing him to this submission, united with the barons in compelling him to make the far more important concession of the Great Charter, the foundation of the liberties of England. The rights of the clergy having been sufficiently established two years before, by John’s submission to Innocent, this article of Magna Charta gives no new rights to ecclesiastical persons, but only confirms what they had already acquired.

† The leading principle of the Feudal System, as it was established in England after the Norman Conquest, was, that all the land in the kingdom was considered to be vested in the crown. The possessor of an estate, which was called a *feud* or *fee*, was not its absolute owner, but only its *tenant* or holder ; and the holding was often called his *tenement*. The lands were granted only

his heir shall be of full age, and owe a relief,* he shall have his inheritance by the ancient relief; that is to say, the heir or heirs of an earl, for a whole earl's barony, by one hundred pounds; the heir or heirs of a baron, for a whole barony, by one hundred pounds; the heir or heirs of a knight, for a whole knight's fee,† by one hundred shillings at most; and he that oweth less shall give less, according to the ancient custom of fees.

IV. But if the heir of any such shall be under age, and shall be in ward,‡ when he comes of age he shall have his inheritance without relief and without fine.

V. The guardian of the land of such heir, who shall be under age, shall take of the land of such heir only reasonable issues, reasonable customs,§ and reasonable services; and that without

on condition of the tenant's performing certain services, the chief of which was *military service*, or the duty of following the king to the wars for a certain number of days in each year. "All the lands and tenements in England, in the hands of subjects," says Coke, "are holden mediately or immediately of the king." Those who received their grants directly from the king were called tenants *in capite*, or *in chief*. The practice of *subinfeudation* being introduced, the great lords or barons, who were themselves vassals of the crown, granted out their lands in a similar manner to inferior tenants, who were then known as immediate vassals of the baron, and as *arrière* vassals of the crown.

* When any of the king's tenants in chief died, the king, as guardian to the heir, seized the estate, and the heir could only obtain it by doing homage to the king, and paying a certain sum, called a *relief*, which at first was determined at a fixed amount, according to every man's degree, from an earl to the humblest tenant. But the sovereign soon came to demand more or less, according to circumstances; and the exactions practised under this pretence, both upon superior and inferior vassals, ranked among the greatest abuses of the feudal policy.

† William the Conqueror divided all England into about 60,000 knights' fees, and the annual value of such a fee was fixed at 20*l*. Every estate supposed to be of this value was bound to furnish the service of one soldier for the king's wars, for the appointed period.

‡ As long as the heirs of the king's tenants in chief were under age, they were said to be *in ward*.

§ By *issues*, are meant the rents and profits of the land and its appurtenances; by *customs*, things due by usage and prescription. As the lord had the wardship of the tenant during minority, he received for his own use the profits of the estate. "By a gross abuse of this custom in England, the right of guardianship in chivalry, or temporary possession of the lands, was assigned over to strangers," who practised every kind of extortion.

destruction or waste of the men or things; and if we shall commit the custody of any such lands to the sheriff, or any other who is answerable to us for the issues of the land, and if he shall make destruction or waste upon the ward lands, we will compel him to give satisfaction, and the land shall be committed to two lawful and discreet men of that fee, who shall be answerable for the issues to us, or to him whom we shall assign. And if we shall give or sell the wardship of any such lands to any one, and he therein makes destruction or waste, he shall lose the wardship, which shall be committed to two lawful and discreet men of that fee, who shall in like manner be answerable to us, as aforesaid.

VI. The warden, moreover, so long as he shall have the wardship of the land, shall keep up and maintain the houses, parks, warrens,* ponds, mills, and other things pertaining to the land, out of the revenues of the same land; and shall restore to the heir, when he comes of full age, his whole land stocked with ploughs and carriages, according as the time of wainage shall require, and the rents and profits of the land can reasonably bear.

VII. Heirs shall be married without disparagement,† but so that, before matrimony shall be contracted, those who are kindred to the heir in blood shall be made acquainted with it.

VIII. A widow, after the death of her husband, shall forthwith, and without any difficulty, have her inheritance, and liberty to marry as she pleases; nor shall she give anything for her dower or her marriage, or for the inheritance which her husband and she held at the day of his death; and she may remain in the mansion-house of her husband forty days after his death, within which term her dower shall be assigned to her.

* *Warrens* may be briefly described as game-preserves. A person may have the right of *warren* in another man's land, — that is, the right of pursuing and taking game upon it.

† “Another right given to the lord by the English and Norman laws was that of marriage, or of tendering a husband to his female wards, while under age, whom they could not reject without forfeiting the value of the marriage; that is, as much as any one would give to the guardian for such an alliance. This was afterwards extended to male wards [and widows], and became a very lucrative source of extortion to the crown, as well as to *mesne* lords,” as those were termed who granted their lands to sub-tenants, or *arrière* vassals. *Disparagement* was used for matching an heir in marriage under his or her degree, or against decency.

IX. No widow shall be compelled by the forfeiture of her goods to marry herself, so long as she has a mind to live without a husband. But yet she shall give security that she will not marry without our assent, if she holds her lands of us, or without the consent of the lord of whom she holds, if she holds of another.

X. Neither we nor our bailiffs will seize any land or rent for any debt, so long as there shall be chattels of the debtor's sufficient to pay the debt. Nor shall the sureties of the debtor be distrained,* so long as the principal debtor is sufficient for the payment of the debt.

XI. And if the principal debtor fail in the payment of the debt, not having wherewithal to discharge it, then the sureties shall answer the debt; and if they will, they shall have the lands and rents of the debtor, until they shall be satisfied for the debt which they paid for him; unless the principal debtor can show himself acquitted thereof, against the said sureties.

XII. If any one has borrowed anything of the Jews, more or less, and dies before the debt is satisfied, there shall be no interest paid for that debt, so long as the heir is under age, of whomsoever he may hold. And if the debt falls into our hands, we will take only the chattel mentioned in the bond or instrument.

XIII. And if any one shall die indebted to the Jews, his wife shall have her dower, and pay nothing of that debt; and if the deceased left children under age, they shall have necessaries provided for them according to the tenement (or real estate) of the deceased; and out of the residue the debt shall be paid; saving, however, the service due to the lord of the fee. In like manner let it be with debts due to other persons than the Jews.

XIV. No scutage or aid † shall be imposed in our kingdom, unless by the Great Council of our kingdom, ‡ except to redeem

* To *distrain* is to seize the goods and chattels of a tenant for rent in arrear or duty unperformed.

† *Scutage* (*escuage*), or aid, was the pecuniary compensation paid by the tenant in lieu of the military service which he was bound to render. It came to signify, also, the tax which was imposed on each vassal for the public service. Under the Norman kings, the practice had grown up of levying such aids at pleasure, and to an extortionate amount.

‡ The *Commune Concilium*, or Great Council of the realm, answering, though very imperfectly, to the Parliament of later times, was, for about two centuries

our person, and make our eldest son a knight, and once to marry our eldest daughter ; and for this there shall only be paid a reasonable aid.

XV. In like manner it shall be concerning the aids of the city of London ; and the city of London shall have all its ancient liberties and free customs, by land as well as by water.

XVI. Furthermore, we will and grant that all other cities, and boroughs, and towns, and ports, shall have all their liberties and free customs.

XVII. In respect to the Great Council of the kingdom, to be held for the assessment of aids, except in the three cases aforesaid, and for the assessing of scutages, we will cause to be summoned the archbishops, bishops, abbots, earls, and great barons of the realm, singly, by our letters.

XVIII. And furthermore, we will cause to be summoned in general, by our sheriffs and bailiffs, all others who hold of us in chief, at a certain day, that is to say, at least forty days before the meeting, to a certain place ; and in all letters of such summons we will declare the cause of the summons.*

XIX. And summons being thus made, the business shall proceed on the day appointed, according to the advice of such as shall be present, although all do not come that were summoned.

XX. We will not for the future grant to any one that he may take aid from his own free tenants, unless to redeem his body, and

after the Conquest, composed only of the tenants in chief, or immediate vassals of the king. Of these, according to Domesday Book, there were only about 400 in the kingdom. But the survey which is recorded in this celebrated book did not extend over all the counties. The chief business of the Great Council seems to have been, to authorize the levying of scutages or aids, which, however, were frequently imposed without their knowledge or consent.

* This article and the preceding one give a very clear account of the constitution of the Great Council, which, down to the 49th year of the reign of Henry III. (A. D. 1265), and perhaps even to the times of Edward I., was the only body that performed any part of the functions of a Parliament. *It was not a representative assembly* ; it was not divided into two houses ; and it was not, properly speaking, a legislative body. The assessment of aids and scutages was its principal, if not its only, business ; and all those had a right to be summoned to it who held their lands directly of the king. In all its great characteristics, it was strictly a feudal body ; and it passed naturally, and by several successive steps, into a Parliament, as the Feudal System itself, of which it was the offspring, waned and finally disappeared.

to make his eldest son a knight, and once to marry his eldest daughter ; and for these purposes, there shall only be paid a reasonable aid.*

XXI. No man shall be compelled on pain of forfeiture to perform more service for a knight's fee, or other free tenement, than is due from thence.

XXII. Common pleas shall not follow our court, but shall be holden in some certain place.† Assizes upon the writs of *novel disseisin*, and of *mort d'ancestor*, and of *darreine presentment*, shall be held only in their proper counties, ‡ and after this manner : — We, or if we should be out of the realm, our chief justiciary, shall send two justiciaries through every county four times a year ; who, with the four knights chosen out of every shire by the people, shall hold the said assizes in the county, on the day and at the place appointed.

* The provisions of this article and the next are important, and evince a very liberal spirit on the part of the confederated barons, who compelled the reluctant monarch to grant the Great Charter. These barons, in their capacity as mesne lords, bound themselves to observe the same restrictions with respect to their own vassals, which they enforced upon the crown with respect to the tenants *in capite*. They took care, also, in the 15th and 16th articles, to obtain a guaranty of all the ancient rights and liberties of the city of London and the other municipalities of the realm.

† The king's court or palace was anciently the great and principal seat of judicature for the whole realm ; and suitors were thus put to great trouble and inconvenience, by the necessity of maintaining their actions in a court which followed the king in all his peregrinations. This article contains the guaranty, if it was not the foundation, of the modern system, according to which, the court of last resort, or of final appeal, was held in some fixed place, as at Westminster ; while the judges were sent upon their circuits through all the counties in the kingdom, so that every man might have justice rendered to him as nearly as possible at his own door. The *assizes* may be loosely described as the *sessions* of these circuit courts in the respective counties.

‡ A writ of *novel disseisin* was the mode of action whereby one who had been unjustly ousted of his tenement sought to recover possession of it ; that of *mort d'ancestor* lay when the legal heirs of a person deceased sought to obtain their inheritance from a stranger into whose hands it might have passed ; while that of *darreine presentment* was the mode of recovering the advowson, or right of presentation to a clerical benefice, from any one who might have unjustly occupied it. The general purpose of this article is, evidently, to save inconvenience and charges to the parties concerned in an attempt to recover property of which they had been deprived. The king engages to give them an opportunity of doing so, four times a year, within the limits of their own county.

XXIII. And if, on the day appointed, the said assizes for the county cannot be held, so many of the knights and freeholders who were present on that day shall remain as may be necessary for making sufficient judgments, according as there is more or less business.*

XXIV. A freeman shall not be amerced for a small fault, but according to the degree of the fault; and for a great crime, in proportion to the heinousness of it, saving to him his contenement; † and after the same manner, a merchant, saving to him his merchandise.

XXV. And a villein ‡ shall be amerced after the same manner, saving to him his wainage, if he falls under our mercy; and none of the aforesaid amerciements § shall be assessed but by the oath of honest men of the neighborhood.

XXVI. Earls and barons shall not be amerced but by their peers, and according to the quality of the offence.

XXVII. No ecclesiastical person shall be amerced but from his lay tenement, according to the proportion aforesaid, and not according to the value of his ecclesiastical benefice.

XXVIII. Neither a town, nor any person, shall be distrained to

* The meaning of this provision seems to be, that if the king's judges failed to appear at the time and place appointed, then the knights and freeholders who had assembled to meet them (four of whom, chosen by the county, were to be the assessors or assistant judges) might proceed to hold a court without them, at least so far as to render judgment in all cases in which delay would be perilous or highly inconvenient.

† *Contenement* expresses the means of a person's livelihood, as the arms of a gentleman, the merchandise of a trader, the tools of a mechanic, and the plough and wagons (called in the next article the *wainage*) of a peasant. By *freeman* in this clause, and elsewhere, we are to understand any one who was not a villein or serf.

‡ There were two classes of *villeins* or serfs in England; *villeins in gross* were immediately attached to the person of their lord and his heirs, and their condition was not unlike that of slaves; *villeins regardant* were *adscripti glebæ*, or attached to the soil. They could not be separated from the manor or estate to which they originally belonged, but when the estate changed hands, the villeins were transferred along with it.

§ An *amerciament* was the pecuniary punishment of an offender. The word is derived from the French *merci*, and differs from a *fine*, which is a punishment determined in amount by some statute, while amerciaments are such as are arbitrarily imposed, and are esteemed more merciful than fines.

make bridges over rivers, unless that anciently and of right they are bound to do it.

XXIX. No sheriff, constable, coroners, or other bailiffs of ours, shall hold pleas of the crown.*

XXX. All counties, hundreds, wapentakes, and trethings shall stand at the old rents, without any increase, except in our demesne lands.†

XXXI. If any one that holds a lay-fee ‡ of us dies, and the sheriff or our bailiff show our letters patent of summons concerning a debt due to us from the deceased, it shall be lawful for the sheriff or our bailiff to attach and register the chattels of the deceased found upon his lay-fee, to the value of the debt, by the view of lawful men, so that nothing be removed until our whole debt be paid; and the rest shall be left to the executors to fulfil the will of the deceased; and if there be nothing due from him to us, all the chattels shall remain to the deceased, saving to his wife and children their reasonable shares.

XXXII. If any freeman dies intestate, his chattels shall be distributed by the hands of his nearest relations and friends, by the view of the Church, saving to every one the debts which the deceased owed him.

XXXIII. No constable or bailiff of ours shall take corn or other chattels of any man, unless he presently give him money for it, or hath respite of payment by consent of the seller.

XXXIV. No constable shall distrain any knight to give money for castle-guard, § if the knight himself shall keep ward in his

* *Pleas of the crown* are what we should call criminal prosecutions, instituted in the king's name for offences against his person or for breaches of the peace; *common pleas* are civil suits between man and man.

† Counties, hundreds, wapentakes, and trethings are ancient Saxon divisions of the territory or population, the precise extent of each of which is not certainly known. The "old rents" (*firmæ antiquæ*) were the feudal dues from each of these territorial divisions, the amount of which had been determined by usage, though the king had often arbitrarily increased them. The *demesne* lands are those which the lord keeps in his own possession or occupation, as distinguished from those occupied by the various ranks of his tenants. The demesne lands of the crown, under the Norman and Plantagenet lines, were very considerable in extent.

‡ A *lay-fee* is so called to distinguish it from an ecclesiastical benefice.

§ *Castle-guard* was an imposition laid upon all persons who dwelt within a

own person, or by another able man, in case he shall be hindered by any reasonable cause. And if we shall lead him, or if we shall send him into the army, he shall be free from castle-guard for the time he shall be in the army by our command.

XXXV. No sheriff or bailiff of ours, or any other person, shall take horses or carts of any freeman, for carriage, except by consent of the owner.

XXXVI. Neither we nor our officers shall take any other man's timber for our castles, or other uses, unless by the consent of the owner of the timber.

XXXVII. We will retain the lands of those that are convicted of felony but one year and one day, and then the lands shall be delivered to the lords of the fee.

XXXVIII. All wears* from henceforth shall be demolished in the rivers Thames and Medway, and throughout all England, except upon the sea-coast.

XXXIX. The writ which is called *præcipe* † shall not henceforth be granted to any one of any tenement, whereby a freeman may lose his court.

XL. There shall be one measure of wine and one of ale through our whole realm, and one measure of corn, that is to say, the London quarter; and one breadth of dyed cloth and russets and habergeants, ‡ that is to say, two ells within the list; and the weights shall be as the measures.

XLI. Nothing shall henceforth be given or taken for a writ of

certain distance of a castle or fortress, for the maintenance of those who kept watch and ward in it. Like all other feudal dues, it had been made a pretence for much extortion.

* *Wears* are dams and similar contrivances erected in rivers, for the purpose of taking fish or conveying water to a mill. According to the present English law, wears cannot be maintained to the prejudice of the public or of individuals, except such as have existed from time immemorial, or are sanctioned by act of Parliament.

† The writ *præcipe quod reddat* signifies usually an order from the king, or some court of justice, to put in possession one who complains of having been unjustly ousted. The intention of this article seems to be, that the person dispossessed by such an order should still have opportunity to try his title in a court of law.

‡ A sort of coarse cloth.

inquisition* of life or limb, but it shall be granted gratis, and not denied.

XLII. If any one holds of us by fee-farm, or socage, or burgage,† and holds lands of another by military service, we will not have the wardship of the heir, or of land which belongs to another man's fee, by reason of what he holds of us by fee-farm, socage, or burgage; nor will we have the wardship of the fee-farm, socage, or burgage, unless the fee-farm itself is bound to perform military service.

XLIII. We will not have the wardship of an heir, nor of any land which he holds of another by military service, by reason of any petit sergeanty ‡ he holds of us, as by the service of giving us knives, arrows, or the like.

XLIV. No bailiff for the future shall put any man to his law, § upon his mere accusation, without credible witnesses produced to prove it.

XLV. No freeman shall be taken, or imprisoned, or disseized, or outlawed, or banished, or anyways injured; nor will we pass upon him, nor send upon him, || unless by the legal judgment of his peers, or by the law of the land.

* A writ to inquire whether a man committed to prison on suspicion of murder was committed on just cause of suspicion, or only out of malice and ill-will, is called a *writ of inquisition*.

† "One of the earliest and most important changes in the condition of the burgesses," says Mr. Hallam, "was the conversion of their individual tributes into a perpetual rent for the whole borough. The town was then said to be affarmed, or let in *fee-farm*, to the burgesses and their successors for ever." If no such conversion has been made, then the tenure by which the individual inhabitants of the borough hold their land, as by the payment of a certain rent, is called a *burgage* tenure. *Socage* has nearly the same meaning with reference to land in the country, that *burgage* has with respect to land in a borough or town. It is a tenure whereby one holds a tenement on condition, anciently, of ploughing the land of his lord, or performing other inferior services in husbandry. These services were afterwards commuted into a fixed money rent, and then the tenure was called *free socage*.

‡ *Sergeanty* is held to be a service that cannot be due from a tenant to any lord, except the king only. *Grand sergeanty* is when a tenant holds on condition of performing some personal service, either at the king's coronation or in things military; *petit sergeanty* is when one is bound to give the king annually some small thing for the wars, and is in effect payable as rent.

§ "To put any man to his law" is, in general terms, to subject him to trial.

|| *Nec super eum ibimus, nec super eum mittemus*; "we will neither pass upon him, nor send upon him." These words have been variously explained; but

XLVI. We will sell to no man, we will not deny or delay to any man, right or justice.

* XLVII. All merchants shall have safe and secure conduct to go out of and to come into England, and to stay there, and to pass, as well by land as by water, to buy and sell by the ancient and allowed customs, without any extortion, except in time of war, or when they shall be of any nation at war with us.

XLVIII. And if there shall be found any such in our land in the beginning of a war, they shall be attached, without damage to their bodies or goods, until it may be known unto us, or our chief justiciary, how our merchants are treated who happen to be in the country which is at war with us; and if ours be safe there, theirs shall be safe in our lands.

XLIX. It shall be lawful henceforth for any one to go out of our kingdom, and return, safely and securely, by land or by water, saving his allegiance to us; unless in time of war, by some short space, for the common good of the kingdom; except those who are prisoners and outlaws according to the law of the land, and people at war with us, and merchants who may be in such condition as is above mentioned.

L. If any man holds of any escheat,* as of the honor † of

Coke's interpretation of them seems the plainest and most authoritative. He says the meaning is, "No man shall be condemned at the king's instance, either in the Court of King's Bench, where the king is supposed to be always present and to render judgment in his own person (*nec super eum ibimus*); nor before any commissioner or judge whatever, whom the king may delegate and appoint to try him (*nec super eum mittemus*)."

This article, with the one which precedes and that which follows it, may be said to constitute the essence and the glory of the Great Charter; for in a few plain and weighty words, very comprehensive in signification, and now rendered solemn by the lapse of many ages and by the many great occasions on which they have been cited, they afford an effectual guaranty of what are so often proudly called "the liberties of Englishmen." They fully justify the grand eulogium passed upon Magna Charta by Mr. Hallam, when he calls it "still the keystone of English liberty. All that has since been obtained is little more than as confirmation or commentary; and if every subsequent law were to be swept away, there would still remain the bold features that distinguish a free from a despotic monarchy."

* According to the fundamental principle of the feudal system, that all the land in the realm belongs to the king, when a man died without heirs, or when he forfeited his tenancy by treason or any other crime, his estate reverted, by *escheat*, as it was called, to the crown.

† *Honor* is particularly used for a more noble seigniorship or lordship, on which

Wallingford, Nottingham, Bologne, Lancaster, or of other escheats which are in our hands, and are baronies, and he dies, his heir shall not give any other relief, or perform any other service, to us than he would to the baron, if the barony were in possession of the baron ; we will hold it after the same manner in which the baron held it.

LI. Those men who dwell without the forest * henceforth shall not come before our justiciaries of the forest upon ordinary summons, unless they are impleaded, or are pledges for any that were attached, for something concerning the forest.

LII. We will not make justiciaries, constables, bailiffs, or sheriffs, except of such persons as are knowing in the laws of the realm, and disposed duly to observe them.

LIII. All barons who are founders of abbeys, and have charters of the kings of England for the advowson,† or are entitled to it by

inferior lordships and manors depend, by performance of customs and services ; and no lordships were originally honors, but such as belonged to the king ; though afterwards they were granted in fee to noblemen.

* "The forest" is, here and elsewhere, used technically for *the king's forest*. It signifies a certain territory of wooded grounds and pastures, within proper marks and boundaries, which are known either as matter of record or by prescription, privileged by royal authority for the peaceful abiding and nourishment of the beasts and birds which are the king's game, and are reserved for the king's pleasure. To preserve the game and keep up the privileges of the place, there were particular laws, courts, and officers belonging to the forest. That passion for the chase, which seems to have characterized the kings and the nobility of England from time immemorial, caused these forests to be arbitrarily enlarged by taking in adjacent lands, and the game to be preserved by very rigorous enactments. The enforcement of these laws, and the frequent disputes as to the proper boundaries of these great game-preserves, were a fruitful source of popular and baronial discontent and rebellion. Lands and tenements, which had long been held by particular families, were often arbitrarily *afforested*, as the phrase was, or annexed to the forest, under the pretext that they had anciently formed a part of it. Vexatious suits were multiplied, and cruel punishments inflicted, for breaches of the forest laws. The barons who compelled King John to grant the Great Charter were thus induced to obtain afterwards the grant of another instrument, called the Charter of the Forest, which, though now obsolete, was probably quite as effective at the time in adding to the happiness and security of the people, as Magna Charta itself. Yet in this article, and several others which follow, provision is made to rectify some of the most flagrant abuses connected with the forests, as if to take double assurance against them.

† *Advowson* is the right of presentation to a clerical benefice.

ancient tenure, may have the custody of them, when vacant, as they ought to have.

LIV. All woods that have been afforested in our own time shall forthwith be disforested, and the like shall be done with the banks of rivers that have been inclosed by us, during our reign.

LV. All evil customs concerning forests, warrens, and foresters, warreners, sheriffs, and their officers, river-banks and their keepers, shall forthwith be inquired into in each county, by twelve sworn knights of the same shire, chosen by fair persons in the same county; and within forty days after the said inquest, they shall be utterly abolished by the same, so as never to be restored.

LVI. We will immediately give up all hostages and engagements delivered unto us by our English subjects, as securities for their keeping the peace, and yielding us faithful service.

LVII. We will entirely remove from our bailiwicks the relations of Gerard de Athyes, so that henceforth they shall have no bailiwick in England. We will also remove Engelard de Cygony, Andrew, Peter, and Gyon, from the chancery, Gyon de Cygony, Geoffrey de Martyn and his brothers, Philip Mark and his brothers, and his nephew Geoffrey, and their whole retinue.

LVIII. And as soon as peace is restored, we will send out of the kingdom all foreign soldiers, crossbowmen, and stipendiaries, who are come with horses and arms, to the injury of our people.

LIX. If any one hath been dispossessed or deprived by us, without the legal judgment of his peers, of his lands, castles, liberties, or right, we will forthwith restore them to him; and if any dispute arises upon this head, let the matter be decided by the five-and-twenty barons hereafter mentioned for the preservation of the peace.

LX. As for all those things of which any person has, without the legal judgment of his peers, been dispossessed or deprived, either by King Henry, our father, or our brother, King Richard, and which we have in our hands, or are possessed by others, and which we are bound to warrant and make good, we shall have a respite for the term usually allowed to Crusaders; excepting those things about which there is a suit depending, or whereof an inquest hath been made by our order, before we undertook the Crusade.* But

* Certain privileges were assigned, through the influence of the Church, to

when we return from our pilgrimage, or if we do not perform it, we will immediately cause full justice to be administered therein.

LXI. We shall have the same respite, and the same rules shall be observed, for disforesting or continuing the forests which Henry, our father, or our brother Richard, have afforested; and for such wardships of lands which are in another's fee, as we have hitherto enjoyed by reason of a fee held of us by knight's service; and for the abbeys founded in any other fee than our own, in which the lord of the fee claims a right. And when we return from our pilgrimage, or if we should not perform it, we will immediately do full justice to all the complainants in this behalf.

LXII. No man shall be taken or imprisoned upon the appeal of a woman,* for the death of any other man than her husband.

LXIII. All unjust and illegal fines, and all amerciaments imposed unjustly and contrary to the law of the land, shall be entirely remitted, or else left to the decision of the five-and-twenty barons hereafter mentioned for the preservation of the peace, or of the major part of them, together with the aforesaid Stephen, Archbishop of Canterbury, if he can be present, and others whom he shall think fit to take along with him; and if he cannot be present, the business shall nevertheless go on without him; but so that if one or more of the five-and-twenty barons aforesaid be plaintiffs in the same cause, they shall be set aside as to what concerns this particular affair, and others be chosen in their room out of the said five-and-twenty, and sworn by the rest to decide that matter.

LXIV. If we have disseized or dispossessed the Welsh of any lands, liberties, or other things, without the legal judgment of their peers, these shall be immediately restored to them. And if any

those who assumed the cross and went to the holy war in Palestine, among which was an exemption, for a certain period, from all claims against them. Of this pretext the cowardly and hypocritical John made frequent use, though in fact he never joined the Crusade.

* *Appeal*, according to its primitive legal meaning, signifies the accusation of a murderer by a person who had interest in the party killed, or of a felon by one of his accomplices. Thus the heir male may bring an appeal for the death of him from whom he received his estate, or a wife for the death of her husband. Such an appeal must be commenced within a year and a day after the death of the person murdered, and within the county where the crime was committed, or where the person died.

dispute arises upon this head, the matter shall be determined in the Marches,* by the judgment of their peers ; for tenements in England, according to the law of England ; for tenements in Wales, according to the law of Wales ; for tenements in the Marches, according to the law of the Marches ; the same shall the Welsh do to us and our subjects.

LXV. As for all those things of which any Welshman hath, without the legal judgment of his peers, been disseized or deprived by King Henry, our father, or our brother, King Richard, and which we either have in our hands, or others are possessed of, and which we ought to warrant, we shall have a respite for the term generally allowed to Crusaders ; excepting those things about which a suit is pending, or whereof an inquest has been made by our order, before we undertook the Crusade. But when we return, or if perchance we stay at home and do not perform our pilgrimage, we will immediately do them full justice, according to the laws of the Welsh, and of the countries or districts aforementioned.

LXVI. We will without delay dismiss the son of Llewelin, and all the Welsh hostages, and release them from the engagements they entered into with us for the preservation of the peace.

LXVII. We will treat with Alexander, King of Scots, concerning the restoring of his sisters, and hostages, and rights and liberties, in the same form and manner as we shall do to the rest of our barons of England ; unless, by the engagements which his father William, late King of Scots, hath entered into with us, it ought to be otherwise ; and this shall be left to the determination of his peers in our court.

LXVIII. All the aforesaid customs and liberties which we have granted to be holden in our kingdom, as much as it belongs to us towards our people, shall be observed also by all our subjects, as well clergy as laity, as far as they are concerned, towards their dependents.†

* The *Marches* signify the limits, or the border districts, as between England and Wales, or England and Scotland.

† In this article, again, we perceive that the intention of the barons who imposed Magna Charta upon the king was to guard the rights of the people generally, not only against the monarch, but against all the lords who might be disposed to use their feudal power oppressively.

LXIX. And whereas, for the honor of God and the amendment of our kingdom, and for quieting the discord that has arisen between us and our barons, we have granted all the things aforesaid; willing to render them firm and lasting, we do give and grant our subjects the following security, namely: that the barons may choose five-and-twenty barons of the kingdom, whom they shall think proper, who shall take care with all their might to hold and observe, and cause to be observed, the peace and liberties which we have granted them, and by this our present charter confirmed. So that if we, our justiciary, our bailiffs, or any of our officers, shall in any case fail in the performance of them towards any person, or shall break through any of these articles of peace and security, and the offence is notified to any four barons out of the five-and-twenty aforementioned, the said four barons shall repair to us, or to our justiciary if we are out of the realm, and, laying open the grievance, shall petition to have it redressed without delay; and if it is not redressed by us, or, if we should chance to be out of the realm, if it is not redressed by our justiciary, within forty days, reckoning from the time when it was notified to us, or to our justiciary if we should be out of the realm, the four barons aforesaid shall lay the cause before the rest of the five-and-twenty barons, and the said five-and-twenty barons, together with the community of the whole kingdom, shall distrain and distress us in all the ways possible; namely, by seizing our castles, lands, possessions, and in any other manner they can, till the grievance is redressed to their pleasure, saving harmless our own person, and the persons of our queen and children; and when it is redressed, they shall obey us as before.

LXX. And any person whatsoever in the kingdom may swear that he will obey the orders of the five-and-twenty barons aforesaid, in the execution of the premises, and that he will distress us, jointly with them, to the utmost of his power; and we give public and free liberty to any one that he may swear to them, and we never will hinder any person from taking the same oath.

LXXI. As for all those of our subjects who will not, of their own accord, swear to join the five-and-twenty barons in distraining and distressing us, we will issue our order to make them take the same oath as aforesaid.

LXXII. And if any one of the five-and-twenty barons dies, or

goes out of the kingdom, or is hindered in any other way from putting the things aforesaid in execution, the rest of the said five-and-twenty barons may choose another in his place, at their discretion, who shall be sworn in like manner as the rest.

LXXIII. In all things that are committed to the charge of these five-and-twenty barons, if, when they are all assembled together, they should happen to disagree about any matter, or some of them, when summoned, will not or cannot come, whatever is agreed upon or enjoined by the major part of those who are present shall be reputed as firm and valid as if all the five-and-twenty had given their consent; and the aforesaid five-and-twenty shall swear, that all the premises they will faithfully observe, and cause with all their power to be observed.

LXXIV. And we will not, by ourselves or others, procure anything from any person whereby any of these concessions and liberties may be revoked or lessened; and if any such thing be obtained, let it be null and void; neither shall we ever make use of it, either by ourselves or any other.*

LXXV. And all the ill-will, anger, and malice that hath arisen between us and our subjects of the clergy and laity, from the first breaking out of the dissension between us, we do fully remit and forgive. Moreover, all trespasses occasioned by the said dissensions, from Easter, in the sixteenth year of our reign, till the restoration of peace and tranquillity, we hereby entirely remit to all, clergy as well as laity, and, as far as in us lies, do fully forgive.

LXXVI. We have moreover granted them our letters patent testimonial of Stephen, Lord-Archbishop of Canterbury, of Henry, Lord-Archbishop of Dublin, and the Bishops aforesaid, as also of master Pandulph, for the security and concessions aforesaid.

LXXVII. Wherefore we will, and firmly enjoin, that the Church of England be free, and that all men in our kingdom have and hold all the aforesaid liberties, rights, and concessions, truly and peaceably, freely and quietly, fully and wholly, to themselves and

* This article is a curious one, as it shows that the barons foresaw, and, so far as was in their power, provided against, the trick which the perjured John very soon put upon them, by inducing the Pope, whom in his baseness he had recognized as lord paramount of England, to release him from his oath, to annul the Charter, and to threaten with excommunication any who should claim the benefit of its provisions.

their heirs, of us and our heirs, in all things and places for ever, as aforesaid.

LXXVIII. It is also sworn, as well on our part as upon the part of the barons, that all the things aforesaid shall faithfully and sincerely be observed.

Given under our hand, in the presence of the witnesses above named, and many others, in the meadow called Runningmede, between Windsor and Staines, the 15th day of June, in the 17th year of our reign.

[AMONG the numerous ratifications of the Great Charter, far the most important is that which Edward I. was compelled to grant, in 1297. Mr. Hallam calls it "that famous statute, inadequately denominated the Confirmation of the Charters, because it added another pillar to our constitution, not less important than the Great Charter itself." After providing for the effectual promulgation of the two Charters, that of the Forest being then reckoned of at least equal importance with the main instrument, after denouncing a solemn sentence of excommunication against all who should infringe them, and particularly directing them to be allowed in all points as the law of the land, it went much further. "Hitherto the king's prerogative of levying money, by name of *tallage* or *prise*, from his towns and tenants in demesne, had passed unquestioned. Some impositions, that especially on the export of wool, affected all the king's subjects. It was now the moment to enfranchise the people, and give that security to private property which Magna Charta had given to personal liberty." According to this statute, all such "aids, tasks, and prises" before taken are renounced as precedents, and the king binds himself never to take them in future but by the common assent of the realm. Hence the Confirmation of the Charters, or an abstract of it under the form of a supposed statute *de tallagio non concedendo*, was more frequently cited than any other enactment, by those who resisted the illegal exactions of Charles I.

The original of the *Confirmatio Chartarum* is still in existence, though considerably shrivelled by the fire which damaged so many of the Cottonian manuscripts in 1731. It is in old Norman French. The translation here given is that which accompanies the original in Ruffhead's Statutes at Large; but it has been carefully compared with the original, and slightly amended.]

CONFIRMATIO CHARTARUM.

A

CONFIRMATION

OF

THE GREAT CHARTER AND THE CHARTER OF THE FOREST,

PASSED IN THE 25TH YEAR OF EDWARD I., A. D. 1297.

EDWARD, by the grace of God King of England, Lord of Ireland, and Duke of Aquitaine, to all who shall see or hear these present letters, greeting : —

I. Know ye that we, to the honor of God and of Holy Church, and to the profit of all our realm, have granted, for us and our heirs, that the Charter of Liberties and the Charter of the Forest, which were made by common assent of all the realm, in the time of King Henry our father,* shall be kept in every point without breach. And we will that the same Charters shall be sent under our seal, as well to our justices of the forest as to others, and to all sheriffs of shires, and to all our other officers, and to all our cities throughout the realm, together with our writs, in the which it shall be contained, that they cause the aforesaid charters to be published, and declare to the people that we have confirmed them in all points ; and that our justices, sheriffs, mayors, and other ministers, who, under us, have the laws of our land to guide,

* The Confirmation of the Charters is hereby rendered directly applicable only to the Great Charter and the Charter of the Forest as they were granted by Henry III., in 1224, and which are now, consequently, a part of the existing law in England. Henry's Charter differs in several respects from that of John, one variation being of singular importance, and of such a nature as we should be least prepared to expect. The prohibition of levying aids or escuages without consent of the Great Council is not found in the later instrument, — "an omission," says Mr. Hallam, "for which we cannot assign any other motive than the disposition of his ministers to get rid of that restriction."

shall allow the said Charters pleaded before them in judgment in all their points, — that is, to wit, the Great Charter as the Common Law, and the Charter of the Forest according to the assize of the forest, for the amendment of our people.

II. And we will, that if any judgment be given from henceforth contrary to the points of the Charters aforesaid by the Justices, or by any other our ministers that hold plea before them against the points of the Charters, it shall be undone, and holden for naught.

III. And we will, that the same Charters shall be sent, under our seal, to cathedral churches throughout our realm, there to remain, and shall be read before the people two times by the year.

IV. And that all archbishops and bishops shall pronounce the sentence of excommunication against all those who, by word, deed, or counsel, do contrary to the aforesaid Charters, or who in any point break or undo them. And that the said curses be twice a year denounced and published by the prelates aforesaid. And if the same prelates, bishops, or any of them, be remiss in the denunciation of the said sentences, the Archbishops of Canterbury and York for the time being shall compel and distrain them to the execution of their duties in form aforesaid.

V. And for so much as divers people of our realm are in fear that the aids and tasks which they have given to us beforetime towards our wars and other business, of their own grant and goodwill, (howsoever they were made,) might turn to a bondage to them and their heirs, because they might at another time be found in the rolls, and likewise for the prises taken throughout the realm by our ministers in our name: We have granted for us and our heirs, that we shall not draw such aids, tasks, nor prises* into a

* The *tasks* and *prises* here spoken of may be included under the general name of *tallages*, of which Mr. Hallam gives the following explanation. "None but military tenants could be liable for escuage; but the inferior subjects of the crown were oppressed by tallages. The demesne lands of the king and all royal towns were liable to tallage, an imposition far more rigorous and irregular than those which fell upon the gentry. Tallages were continually raised upon different towns during all the Norman reigns, without the consent of Parliament, which neither represented them nor cared for their interests. The itinerant justices in their circuit usually set this tax. Inferior lords might tallage their own tenants and demesne towns, though not, it seems, without the king's permission. Customs upon the import and export of merchandise, of

custom, for anything that hath been done heretofore, be it by roll or any other precedent that may be found.

VI. Moreover, we have granted for us and our heirs, as well to archbishops, bishops, abbots, priors, and other folk of Holy Church, as also to earls, barons, and to all the commonalty of the land, that for no business from henceforth we shall take such manner of aids, tasks, nor prises, but by the common assent of all the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed.

VII. And for so much as the greater part of the commonalty of the realm find themselves sore grieved with the maletent* of wools, that is to wit, a toll of forty shillings for every sack of wool, and have made petition to us to release the same: We at their requests have clearly released it, and have granted that we shall not take that, or any other, without their common assent and good-will, saving to us and our heirs the custom of wools, skins, and leather, granted before by the commonalty aforesaid. In witness of which things, we have caused these our letters to be made patent. Witness Edward, our son, at London, the tenth day of October, the five-and-twentieth year of our reign.

which the prisage of wine, that is, a right of taking two casks out of each vessel, seems the most material, were immemorially exacted by the crown."

* *Maletent*, otherwise called *maletolt*, is explained by Dufresne as *male tolta, res injuste ablata*, an unjust exaction. A new tax, of forty shillings on every wool-sack exported, had been irregularly granted, and therefore illegally taken, only the year before, instead of the tax of one noble, granted to the king in 1275.

[THE Statute of Treasons, enacted in the 25th year of Edward III., A. D. 1350, occupies a high place among the age-hallowed muniments of English liberty. The crime of high treason seems to have been of a very vague and indefinite nature, determined only by the arbitrary construction of the courts, which sought chiefly to gratify the malice or vengeance of the king. No people can be free unless their laws provide security against the discretion of the judges in a matter which so nearly concerns the government and its subjects. The Parliament of Edward III., declaring that "the king's judges in different counties adjudge men indicted before them to be traitors for diverse matters not known by the Commons to be treasonable," petitioned that the king would "declare in Parliament what should be held for treason." This petition caused the enactment of a statute which has, ever since, been the strongest safeguard of those whom the king wished to punish as traitors. I insert only an extract from it, which contains all the essential portion of the statute.]

E X T R A C T

FROM

THE STATUTE OF TREASONS,

PASSED IN THE 25TH YEAR OF EDWARD III., A. D. 1350.

WHEREAS divers opinions have been before this time in what case treason shall be said, and in what not ; the king, at the request of the Lords and Commons, hath made a declaration in the manner as hereafter followeth : that is to say, when a man doth compass or imagine the death of our lord the king, of my lady his queen, or of their eldest son and heir ; or if a man do violate the king's companion, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir ; or if a man do levy war against our lord the king in his realm, or be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm or elsewhere, and thereof be provably attainted of open deed by people of their condition ; and if a man counterfeit the king's great or privy seal, or his money ; and if a man bring false money into this realm, counterfeit to the money of England, as the money called Lusheburg, or other like to the said money of England, knowing the money to be false, to merchandise or make payment in deceit of our said lord the king and of his people ; and if a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their place doing their offices ; and it is to be understood, that in the cases above rehearsed, it ought to be judged treason which extends to our lord the king and his royal majesty. And of such treason the forfeiture of the escheats pertaineth to our lord the king, as well of the lands and tenements holden of others as of himself.

[THE principal matters of complaint taken up by the third Parliament of Charles I. were, the exaction of money in the form of forced loans or *benevolences*; the commitment of those who refused to pay the sums thus demanded, and the refusal of the courts to liberate the persons thus committed when brought up by writs of habeas corpus; the billeting of soldiers on private persons; and the commissions to try military offenders by martial law. These abuses formed the foundation of the Petition of Right, presented by the Commons in the shape of a declaratory statute. The Parliament did not claim, as they affirmed, any new or additional powers or privileges, but aimed only at securing those which had been transmitted to them from their ancestors. Hence they resolved that the new law should be called a *Petition of Right*, as implying that it contained only a corroboration or explanation of the ancient constitution, and not any infringement of royal prerogative or acquisition of new liberties.]

THE PETITION OF RIGHT,

GRANTED IN THE 3D YEAR OF CHARLES I., A. D. 1627.

HUMBLY show unto our sovereign lord the king, the Lords spiritual and temporal, and Commons in Parliament assembled, That, whereas it is declared and enacted, by a statute made in the time of the reign of King Edward I., commonly called *Statutum de tallagio non concedendo*, that no tallage or aid shall be levied by the king or his heirs in this realm, without the good-will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other the freemen of the commonalty of this realm; and by authority of Parliament holden in the five-and-twentieth year of the reign of King Edward III. it is declared and enacted, that, from thenceforth, no person shall be compelled to make any loans to the king against his will, because such loans were against reason and the franchise of the land; and by other laws of this realm it is provided, that none should be charged by any charge or imposition called a *benevolence*, or by such like charge; by which the statutes before mentioned, and other the good laws and statutes of this realm, your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid, or other like charge, not set by common consent in Parliament:

II. Yet, nevertheless, of late, divers commissions, directed to sundry commissioners in several counties, with instructions, have issued; by means whereof your people have been in divers places assembled, and required to lend certain sums of money unto your Majesty; and many of them, upon their refusal to do so, have had an oath administered unto them not warrantable by the laws or statutes of this realm, and have been constrained to become bound to make appearance and give attendance before your Privy Council, and in other places; and others of them have been therefor imprisoned, confined, and sundry other ways molested and disquieted; and divers other charges have been laid and levied upon your people, in several counties, by lord lieutenants, deputy lieutenants, commissioners for musters, justices of peace, and others,

by command or direction from your Majesty, or your Privy Council, against the laws and free customs of this realm :

III. And whereas also, by the statute called *the Great Charter of the liberties of England*, it is declared and enacted, that no freeman may be taken or imprisoned, or be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land :

IV. And, in the eight-and-twentieth year of the reign of King Edward III., it was declared and enacted, by authority of Parliament, that no man, of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought to answer by due process of law :

V. Nevertheless, against the tenor of the said statutes, and other the good laws and statutes of your realm to that end provided, divers of your subjects have of late been imprisoned without any cause showed ; and when, for their deliverance, they were brought before justice, by your Majesty's writs of *habeas corpus*, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified but that they were detained by your Majesty's special command, signified by the lords of your Privy Council, and yet were returned back to several prisons, without being charged with anything to which they might make answer according to the law :

VI. And whereas, of late, great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants, against their wills, have been compelled to receive them into their houses, and there to suffer them to sojourn, against the laws and customs of this realm, and to the great grievance and vexation of the people :

VII. And whereas also, by authority of Parliament, in the five-and-twentieth year of the reign of King Edward III., it is declared and enacted, that no man should be forejudged of life or limb, against the form of the *Great Charter* and the law of the land ; and, by the said *Great Charter*, and other the laws and statutes of this your realm, no man ought to be adjudged to death but by the laws established in this your realm, either by the customs of

the same realm, or by acts of parliament; and whereas no offender, of what kind soever, is exempted from the proceedings to be used, and punishments to be inflicted, by the laws and statutes of this your realm: Nevertheless, of late time, divers commissions, under your Majesty's great seal, have issued forth, by which certain persons have been assigned and appointed commissioners, with power and authority to proceed within the land, according to the justice of martial law, against such soldiers or mariners, or other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanor whatsoever, and by such summary course and order as is agreeable to martial law, and as is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial:

VIII. By pretext whereof, some of your Majesty's subjects have been, by some of the said commissioners, put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought, to have been judged and executed:

IX. And also sundry grievous offenders, by color thereof claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders, according to the same laws and statutes, upon pretence that the said offenders were punishable only by martial law, and by authority of such commissions as aforesaid; which commissions, and all other of like nature, are wholly and directly contrary to the said laws and statutes of this your realm:—

X. They do therefore humbly pray your most excellent Majesty, That no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent, by act of Parliament; and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same, or for refusal thereof; and that no freeman in any such manner as is before mentioned be imprisoned or detained; and that your Majesty would be pleased to remove the said soldiers and mariners, and that people may not be so burdened in time to come; and that the

aforesaid commissions, for proceeding by martial law, may be revoked and annulled ; and that hereafter no commissions of like nature may issue forth, to any person or persons whatsoever, to be executed as aforesaid, lest, by color of them, any of your Majesty's subjects be destroyed, or put to death, contrary to the laws and franchise of the land.

XI. All which they most humbly pray of your most excellent Majesty, as their rights and liberties, according to the laws and statutes of this realm ; and that your Majesty would also vouchsafe to declare, that the awards, doings, and proceedings to the prejudice of your people, in any of the premises, shall not be drawn hereafter into consequence or example ; and that your Majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, that in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honor of your Majesty, and the prosperity of this kingdom.

Which petition being read and fully understood by his Majesty the king, it was thus answered in full Parliament, viz. :—

*Soit droit fait comme il est désirée.**

* This is the old form, still preserved, according to which the sovereign gives his assent to a bill or petition enacted by Parliament. For an account of the evasion which Charles I., in this instance, attempted to practise, giving first a long and ambiguous answer, and only at last, seeing that the Commons would not otherwise be satisfied, signifying his assent in the usual form, reference may be made to any of the histories of the period.

[“ It is a very common mistake, and that not only among foreigners, but many from whom some knowledge of our constitutional laws might be expected, to suppose that this statute of Charles II. [the Habeas Corpus Act] enlarged in a great degree our liberties, and forms a sort of epoch in their history. But though a very beneficial enactment, and eminently remedial in many cases of illegal imprisonment, it introduced no new principle, nor conferred any right upon the subject. From the earliest records of the English law, no freeman could be detained in prison, except upon a criminal charge or conviction, or for a civil debt. In the former case, it was always in his power to demand of the Court of King’s Bench a writ of *habeas corpus ad subjiciendum*, directed to the person detaining him in custody, by which he was enjoined to bring up the body of the prisoner, with the warrant of commitment, that the court might judge of its sufficiency, and remand the party, admit him to bail, or discharge him, according to the nature of the charge. This writ issued of right, and could not be refused by the court. It was not to bestow an immunity from arbitrary imprisonment (which is abundantly provided in Magna Charta, if indeed it were not much more ancient), but to cut off the abuses by which the government’s lust of power and the servile subtlety of crown lawyers had impaired so fundamental a privilege.” — Hallam’s *Constitutional History*.

Such abuses were commitments in the name of the king in council, sending prisoners to distant jails, omitting to put their names in the calendar on a jail delivery, refusing writs for producing before the judges persons illegally imprisoned, and jailers disobeying such writs when they were sued out. Lord Shaftesbury, an able but profligate politician, who needed some shield against the king’s vengeance which he was constantly provoking, had several times in vain attempted to remedy these evils. At last, in 1679, with admirable skill he framed this statute, by which, says Lord Campbell, “ personal liberty has been more effectually guarded in England than it has ever been in any other country in the world.”

The bill was strongly opposed in the House of Lords, and it is a curious fact that the third reading of it was carried by an accident. Burnet says: “ Lords Grey and Norris were named to be tellers. Lord Norris, being a man subject to vapors, was not at all times attentive to what he was doing. So a very fat lord coming in, Lord Grey counted him for ten, as a jest, at first; but seeing Lord Norris had not observed it, he went on with his misreckoning of ten; so it was reported to the House, and declared that they who were for the bill were the majority, though it indeed went on the other side.”]

THE HABEAS CORPUS ACT,

ENTITLED

AN ACT FOR THE BETTER SECURING THE LIBERTY OF THE SUBJECT, AND FOR PREVENTION OF IMPRISONMENT BEYOND THE SEAS.

PASSED IN THE 31ST YEAR OF CHARLES II., A. D. 1679.

WHEREAS great delays have been used by sheriffs, gaolers, and other officers, to whose custody any of the king's subjects have been committed, for criminal or supposed criminal matters, in making returns of writs of *habeas corpus*, to them directed, by standing out on *alias* or *pluries** *habeas corpus*, and sometimes more, and by other shifts to avoid their yielding obedience to such writs, contrary to their duty and the known laws of the land, whereby many of the king's subjects have been, and hereafter may be, long detained in prison, in such cases where by law they are bailable, to their great charge and vexation :

II. For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal or supposed criminal matters, (2) Be it enacted by the king's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority thereof, That whensoever any person or persons shall bring any *habeas corpus* directed unto any sheriff or sheriffs, gaoler, minister, or other person whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer, or left at the gaol or prison with any of the under-officers, under-keepers, or deputy of the said officers or keepers, that the said officer or officers, his or their under-officers, under-keepers, or depu-

* *Alias* is a second, and *pluries* is the name of a third writ, sent out by the courts after the former has produced no effect. The object of this act is to render a second writ of *habeas corpus* unnecessary, by making the first one effectual without fail.

ties, shall within three days after the service thereof, as aforesaid, (unless the commitment aforesaid were for treason or felony, plainly and especially expressed in the warrant of commitment,) upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the judge or court that awarded the same, and indorsed upon the said writ, not exceeding twelve pence per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the court or judge to which he shall be brought, according to the true intent of this present act, and that he will not make any escape by the way, make return of such writ; (3) and bring, or cause to be brought, the body of the party so committed or restrained, unto or before the Lord Chancellor, or Lord Keeper of the Great Seal of England, for the time being, or the judges or barons of the said court from whence the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof; (4) and shall then likewise certify the true causes of his detainer or imprisonment, unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places where such court or person is, or shall be residing; and if beyond the distance of twenty miles, and not above one hundred miles, then within the space of ten days; and if beyond the distance of one hundred miles, then within the space of twenty days after such delivery aforesaid, and not longer.

III. And to the intent that no sheriff, gaoler, or other officer, may pretend ignorance of the import of any such writ, (2) Be it enacted by the authority aforesaid, that all such writs shall be marked in this manner: "*Per statutum tricesimo primo Caroli secundi Regis,*" and shall be signed by the person that awards the same; (3) and if any person or persons shall be or stand committed or detained as aforesaid, for any crime, unless for felony or treason, plainly expressed in the warrant of commitment, in the vacation time and out of term, it shall and may be lawful to and for the person or persons so committed or detained (other than persons convict or in execution by legal process), or any one in his or their behalf, to appeal or complain to the Lord Chancellor or Lord Keeper, or any one of his Majesty's justices, either of the one bench or of the other, or the Barons of the Exchequer of the degree of the

coif; * (4) and the said Lord Chancellor, Lord Keeper, justices or barons, or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made that such copy or copies were denied to be given by such person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorized and required, upon request made in writing by such person or persons, or any on his, her, or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant a *habeas corpus*, under the seal of such court whereof he shall then be one of the judges, (5) to be directed to the officer or officers in whose custody the party so committed or detained shall be, returnable *immediate* before the said Lord Chancellor or Lord Keeper, or such justice, baron, or any other justice or baron of the degree of the coif, of any of the said courts; (6) and upon service thereof as aforesaid, the officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or their deputy, in whose custody the party is so committed or detained, shall, within the times respectively before limited, bring such prisoner or prisoners before the said Lord Chancellor or Lord Keeper, or such justices, barons, or one of them, before whom the said writ is made returnable, and in case of his absence, before any other of them, with the return of such writ and the true causes of the commitment or detainer; (7) and thereupon, within two days after the party shall be brought before them, the said Lord Chancellor or Lord Keeper, or such justice or baron before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties, in any sum according to their discretions, having regard to the quality of the prisoner and the nature of the offence, for his or their appearance in the Court of King's Bench the term following, or at the next assizes, sessions, or general gaol delivery, of or for such county, city, or place where the commitment was, or where the offence was committed, or in such other court where the said offence is properly cognizable, as the case shall require, and then shall certify the said writ with the return

* *Coif* appertains to the title given to Sergeants at Law, who are called *Sergeants of the Coif*, from the lawn coif which they wear under their caps.

thereof, and the said recognizance or recognizances, into the said court where such appearance is to be made ; (8) unless it shall appear to the said Lord Chancellor or Lord Keeper, or justice or justices, or baron or barons, that the party so committed is detained upon a legal process, order, or warrant, out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said justices or barons, or some justice or justices of the peace, for such matters or offences for the which by the law the prisoner is not bailable.

IV. Provided always, and be it enacted, That if any person shall have wilfully neglected, by the space of two whole terms after his imprisonment, to pray a *habeas corpus* for his enlargement, such person so wilfully neglecting shall not have any *habeas corpus* to be granted in vacation time, in pursuance of this act.

V. And be it further enacted, by the authority aforesaid, That if any officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or deputy, shall neglect or refuse to make the returns aforesaid, or to bring the body or bodies of the prisoner or prisoners according to the command of the said writ, within the respective times aforesaid, or, upon demand made by the prisoner or person in his behalf, shall refuse to deliver, or within the space of six hours after demand shall not deliver, to the person so demanding, a true copy of the warrant or warrants of commitment and detainer of such prisoner, which he and they are hereby required to deliver accordingly ; all and every the head gaolers and keepers of such person, and such other person in whose custody the prisoner shall be detained, shall for the first offence forfeit to the prisoner or party grieved the sum of £100 ; (2) and for the second offence the sum of £200, and shall and is hereby made incapable to hold or execute his said office ; (3) the said penalties to be recovered by the prisoner or party grieved, his executors and administrators, against such offender, his executors or administrators, by any action of debt, suit, bill, plaint, or information, in any of the king's courts at Westminster, wherein no essoin,* protection, privilege, injunction, wager of

* *Essoin* is an excuse for non-appearance, on account of sickness or other good cause.

law,* or stay of prosecution by “*Non vult ulterius prosequi*,” or otherwise, shall be admitted or allowed, or any more than one imparlance ; † (4) and any recovery or judgment at the suit of any party grieved shall be a sufficient conviction for the first offence ; and any after recovery or judgment at the suit of a party grieved, for any offence after the first judgment, shall be a sufficient conviction to bring the officers or person within the said penalty for the second offence.

VI. And for the prevention of unjust vexation by reiterated commitments for the same offence, (2) Be it enacted, by the authority aforesaid, That no person or persons, which shall be delivered or set at large upon any *habeas corpus*, shall at any time hereafter be again imprisoned or committed for the same offence, by any person or persons whatsoever, other than by the legal order and process of such court wherein he or they shall be bound by recognizance to appear, or other court having jurisdiction of the cause ; (3) and if any other person or persons shall knowingly, contrary to this act, recommit or imprison, or knowingly procure or cause to be recommitted or imprisoned, for the same offence or pretended offence, any person or persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved the sum of £500 ; any colorable pretence or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid.

VII. Provided always, and be it further enacted, That if any person or persons shall be committed for high treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court, the first week of the term, or first day of the sessions of oyer and terminer ‡ or general gaol delivery, to be brought to his trial, shall not be indicted some time in the next term, sessions of oyer and terminer or general

* *Wager of law* is where a person swears in court, in presence of his compurgators, that he does not owe the debt or detain the article in the manner charged against him.

† *Imparlance* is a petition for delay, or for continuing the cause to the next court.

‡ *Oyer and terminer* is a commission to *hear and determine* causes that may be brought up for trial.

gaol delivery, after such commitment ; it shall and may be lawful to and for the judges of the Court of King's Bench, and justices of oyer and terminer or general gaol delivery, and they are hereby required upon motion to them made in open court the last day of the term, sessions, or gaol delivery, either by the prisoner or any one in his behalf, to set at liberty the prisoner upon bail, unless it appear to the judges and justices, upon oath made, that the witnesses for the king could not be produced the same term, sessions, or general gaol delivery ; (2) and if any person or persons committed as aforesaid, upon his prayer or petition in open court, the first week of the term or the first day of the sessions of oyer and terminer and general gaol delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of oyer and terminer or general gaol delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

VIII. Provided always, That nothing in this act shall extend to discharge out of prison any person charged in debt, or other action, or with process in any civil cause, but that after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody according to the law for such other suit.

IX. Provided always, and be it further enacted by the authority aforesaid, That if any person or persons, subjects of this realm, shall be committed to any prison, or in custody of any officer or officers whatsoever, for any criminal or supposed criminal matter, that the said person shall not be removed from the said prison and custody, into the custody of any other officer or officers ; (2) unless it be by *habeas corpus* or some other legal writ ; or where the prisoner is delivered to the constable or other inferior officer, to carry such prisoner to some common gaol ; (3) or where any person is sent by order of any judge of assize, or justice of the peace, to any common workhouse or house of correction ; (4) or where the prisoner is removed from one place or prison to another within the same county, in order to his or her trial or discharge in due course of law ; (5) or in case of sudden fire or infection, or other necessity ; (6) and if any person or persons shall, after such commitment aforesaid, make out and sign or countersign any warrant or warrants for such removal aforesaid, contrary to this act ;

as well he that makes or signs or countersigns such warrant or warrants, as the officer or officers that obey or execute the same, shall suffer and incur the pains and forfeitures in this act before mentioned, both for the first and second offence respectively, to be recovered in manner aforesaid by the party grieved.

X. Provided also, and be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any prisoner and prisoners as aforesaid, to move and obtain his or their *habeas corpus*, as well out of the High Court of Chancery or Court of Exchequer as out of the Courts of King's Bench or Common Pleas, or either of them ; (2) and if the said Lord Chancellor or Lord Keeper, or any judge or judges, baron or barons, for the time being, of the degree of the coif, of any of the courts aforesaid, in the vacation time, upon view of the copy or copies of the warrant or warrants of commitment or detainer, upon oath made that such copy or copies were denied as aforesaid, shall deny any writ of *habeas corpus*, by this act required to be granted, being moved for as aforesaid, they shall severally forfeit to the prisoner or party grieved the sum of £ 500, to be recovered in manner aforesaid.

XI. And be it declared and enacted by the authority aforesaid, That a *habeas corpus*, according to the true intent and meaning of this act, may be directed and run into any county palatine, the cinque ports, or other privileged places within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, and the islands of Jersey or Guernsey ; any law or usage to the contrary notwithstanding.

XII. And for preventing illegal imprisonments in prisons beyond the seas, (2) Be it further enacted by the authority aforesaid, That no subject of this realm, that now is or hereafter shall be an inhabitant or resiant of this kingdom of England, dominion of Wales, or town of Berwick upon Tweed, shall or may be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into parts, garrisons, islands, or places beyond the seas, which are or at any time hereafter shall be, within or without the dominions of his Majesty, his heirs or successors ; (3) and that every such imprisonment is hereby enacted and adjudged to be illegal ; (4) and that if any of the said subjects now is or hereafter shall be so imprisoned, every such person and persons so imprisoned shall and may for every such imprisonment maintain, by virtue of this act,

an action or actions of false imprisonment, in any of his Majesty's courts of record, against the person or persons by whom he or she shall be so committed, detained, imprisoned, sent prisoner, or transported, contrary to the true meaning of this act, and against all or any person or persons that shall frame, contrive, write, seal, or countersign any warrant or writing for such commitment, detainer, imprisonment, or transportation, or shall be advising, aiding, or assisting in the same, or any of them ; (5) and the plaintiff in every such action shall have judgment to recover his treble costs, besides damages, which damages so to be given shall not be less than £500 ; (6) in which action no delay, stay, or stop of proceeding by rule, order, or command, nor no injunction, protection, or privilege whatsoever, nor any other than one imparlance, shall be allowed, excepting such rule of the court wherein such action shall depend, made in open court, as shall be thought in justice necessary for special cause to be expressed in the said rule ; (7) and the person or persons who shall knowingly frame, contrive, write, seal, or countersign any warrant for such commitment, detainer, or transportation, or shall so commit, detain, imprison, or transport any person or persons, contrary to this act, or be anyways advising, aiding, or assisting therein, being lawfully convicted thereof, shall be disabled from thenceforth to bear any office of trust or profit within the said realm of England, dominion of Wales, or town of Berwick upon Tweed, or any of the islands, territories, or dominions thereunto belonging ; (8) and shall incur and sustain the pains, penalties, and forfeitures limited, ordained, and provided in and by the statute of provision and *præmunire*,* made in the sixteenth year of King Richard the Second ; (9) and be incapable of any pardon from the king, his heirs or successors, of the said forfeitures, losses, or disabilities, or any of them.

XIII. Provided always, That nothing in this act shall extend to give benefit to any person who shall by contract in writing agree with any merchant or owner of any plantation, or other person whatsoever, to be transported to any parts beyond the seas, and

* The pains and penalties provided in this statute are, that the offenders shall be put out of the king's protection, shall forfeit their lands and goods, and shall be imprisoned during the king's pleasure. These are the highest penalties known in the law, except death.

receive earnest upon such agreement, although that afterward such person shall renounce such contract.

XIV. Provided always, and be it enacted, That if any person or persons lawfully convicted of any felony shall in open court pray to be transported beyond the seas, and the court shall think fit to leave him or them in prison for that purpose, such person or persons may be transported into any parts beyond the seas; this act, or anything herein contained, to the contrary notwithstanding.

XV. Provided also, and be it enacted, That nothing herein contained shall be deemed, construed, or taken to extend to the imprisonment of any person before the first day of June, one thousand six hundred and seventy-nine, or to anything advised, procured or otherwise done relating to such imprisonment; anything herein contained to the contrary notwithstanding.

XVI. Provided also, That if any person or persons at any time resiant in this realm shall have committed any capital offence in Scotland or in Ireland, or in any of the islands or foreign plantations of the king, his heirs or successors, where he or she ought to be tried for such offence, such person or persons may be sent to such place, there to receive such trial in such manner as the same might have been used before the making of this act; anything herein contained to the contrary notwithstanding.

XVII. Provided also, and be it enacted, That no person or persons shall be sued, impleaded, molested, or troubled for any offence against this act, unless the party offending be sued or impleaded for the same within two years, at the most, after such time wherein the offence shall be committed, in case the party grieved shall not be then in prison; and if he shall be in prison, then within the space of two years after the decease of the person imprisoned, or his or her delivery out of prison, which shall first happen.

XVIII. And to the intent no person may avoid his trial at the assizes or general gaol delivery, by procuring his removal before the assizes, at such time as he cannot be brought back to receive his trial there, (2) Be it enacted, that after the assizes proclaimed for that county where the prisoner is detained, no person shall be removed from the common gaol upon any *habeas corpus* granted in pursuance of this act, but upon any such *habeas corpus* shall be brought before the judge of assize in open court, who is thereupon to do what to justice shall appertain.

XIX. Provided nevertheless, That after the assizes are ended, any person or persons detained may have his or her *habeas corpus* according to the direction and intention of this act.

XX. And be it also enacted by the authority aforesaid, That if any information, suit, or action shall be brought or exhibited against any person or persons for any offence committed or to be committed against the form of this law, it shall be lawful for such defendants to plead the general issue, that they are not guilty or that they owe nothing, and to give such special matter in evidence to the jury that shall try the same, which matter being pleaded had been good and sufficient matter of law to have discharged the said defendant or defendants against the said information, suit, or action, and the same matter shall be then as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth, or alleged the same matter in bar or discharge of such information, suit, or action.

XXI. And because many times persons charged with petty treason or felony, or accessories thereunto, are committed upon suspicion only, whereupon they areailable or not, according as the circumstances making out that suspicion are more or less weighty, which are best known to the justices of the peace that committed the persons, and have the examination before them, or to other justices of the peace in the county, (2) Be it therefore enacted, That where any person shall appear to be committed by any judge or justice of the peace, and charged as accessory before the fact to any petty treason or felony, or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment, that such person shall not be removed or bailed by virtue of this act, or in any other manner than they might have been before the making of this act.

[THE Revolution of 1688 added no new feature to the English Constitution, and conferred no additional rights or privileges upon the people. But it broke the regular line of succession, and placed a new dynasty upon the throne, thus affirming the doctrine, that the crown was held by virtue of an act of Parliament, and not by indefeasible, divine right. Even this doctrine had been practically asserted, again and again, under the Norman kings, the Plantagenets, and even, by implication, in the time of the Tudors. Yet the Stuarts had always denied it, and the right therefore was now exercised under circumstances which were likely to prevent it from being ever doubted or denied in future. "In order that the questions which had been in dispute between the Stuarts and the nation might never again be stirred, it was determined that the instrument by which the Prince and Princess of Orange were called to the throne, and by which the order of succession was settled, should set forth, in the most distinct and solemn manner, the fundamental principles of the Constitution. This instrument, known by the name of the Declaration of Rights, was prepared by a committee of which Somers, afterwards Lord Chancellor, was chairman." "This Declaration was, some months afterwards, confirmed by a regular act of the legislature, in the Bill of Rights, which establishes at the same time the limitation of the crown, and adds the important provision, That all persons who shall hold communion with the Church of Rome, or shall marry a Papist, shall be excluded, and for ever incapable to possess, inherit, or enjoy the crown and government of this realm; and in all such cases, the people of these realms shall be absolved from their allegiance, and the crown shall descend to the next heir. This was as near an approach to a generalization of the principle of resistance as could be admitted with any security for public order."

Thus the Declaration and the Bill of Rights were indissolubly connected with the Revolution-settlement, as its motive and its condition. The new sovereign was made to perceive that he was raised to the throne for the sake of those liberties by violating which his predecessor had forfeited it. "No pretences were made," says Professor Smyth, "to any merit of salutary alteration or legislative reform. The original Declaration, the subsequent Bill of

Rights, were each of them expressly stated to be only a *declaration* of the old Constitution ; they were each an exhibition of the rights and liberties of the people of England, already undoubted and their own ; experiment, innovation, everything of this kind, is virtually disclaimed."

To the same effect, Mr. Macaulay remarks : " The change seems small. Not a single flower of the crown was touched. Not a single new right was given to the people. The whole English law, substantive and adjective, was, in the judgment of all the greatest lawyers, of Holt and Treby, of Maynard and Somers, exactly the same after the Revolution as before it. Some controverted points had been decided according to the sense of the best jurists ; and there had been a slight deviation from the ordinary course of succession. This was all, and this was enough. As the Revolution was a vindication of ancient rights, so it was conducted with strict attention to ancient formalities. In almost every word and act may be discerned a profound reverence for the past. Both the English parties agreed in treating with solemn respect the ancient constitutional traditions of the state. The only question was, in what sense those traditions were to be understood. But the Declaration of Right, though it made nothing law which had not been law before, contained the germ of the law which gave religious freedom to the Dissenter, of the law which secured the independence of the judges, of the law which limited the duration of Parliaments, of the law which placed the liberty of the press under the protection of juries, of the law which prohibited the slave-trade, of the law which abolished the sacramental test, of the law which relieved the Roman Catholics from civil disabilities, of the law which reformed the representative system, of every good law which has been passed during a hundred and sixty years, of every good law which may hereafter, in the course of ages, be found necessary to promote the public weal, and to satisfy the demands of public opinion."]

THE BILL OF RIGHTS :

AN ACT

DECLARING THE RIGHTS AND LIBERTIES OF THE SUBJECT, AND
SETTLING THE SUCCESSION OF THE CROWN ;

PASSED IN THE 1ST YEAR OF WILLIAM AND MARY, A. D. 1689.

WHEREAS the Lords Spiritual and Temporal, and Commons, assembled at Westminster, lawfully, fully, and freely representing all the estates of the people of this realm, did, upon the thirteenth day of February, in the year of our Lord one thousand six hundred eighty-eight [O. S.], present unto their Majesties, then called and known by the names and style of William and Mary, Prince and Princess of Orange, being present in their proper persons, a certain Declaration in writing, made by the said Lords and Commons, in the words following, viz. : —

‘ WHEREAS the late King James the Second, by the assistance of
‘ divers evil counsellors, judges, and ministers employed by him,
‘ did endeavor to subvert and extirpate the Protestant religion,
‘ and the laws and liberties of this kingdom, —

‘ 1. By assuming and exercising a power of dispensing with and
‘ suspending of laws, and the execution of laws, without consent
‘ of Parliament.

‘ 2. By committing and prosecuting divers worthy prelates, for
‘ humbly petitioning to be excused from concurring to the said as-
‘ sumed power.

‘ 3. By issuing and causing to be executed a commission under
‘ the Great Seal for erecting a court called *The Court of Commis-*
‘ *sioners for Ecclesiastical Causes.*

‘ 4. By levying money for and to the use of the crown, by pre-
‘ tence of prerogative, for other time, and in other manner, than
‘ the same was granted by Parliament.

‘ 5. By raising and keeping a standing army within this kingdom

‘ in time of peace, without consent of Parliament, and quartering
‘ soldiers contrary to law.

‘ 6. By causing several good subjects, being Protestants, to be
‘ disarmed, at the same time when Papists were both armed and
‘ employed, contrary to law.

‘ 7. By violating the freedom of election of members to serve
‘ in Parliament.

‘ 8. By prosecutions in the Court of King’s Bench, for matters
‘ and causes cognizable only in Parliament ; and by divers other
‘ arbitrary and illegal courses.

‘ 9. And whereas, of late years, partial, corrupt, and unqualified
‘ persons have been returned and served on juries in trials, and
‘ particularly divers jurors in trials for high treason, which were
‘ not freeholders.

‘ 10. And excessive bail hath been required of persons committed
‘ in criminal cases, to elude the benefit of the laws made for the
‘ liberty of the subjects.

‘ 11. And excessive fines have been imposed ; and illegal and
‘ cruel punishments inflicted.

‘ 12. And several grants and promises made of fines and for-
‘ feitures, before any conviction or judgment against the persons
‘ upon whom the same were to be levied.

‘ All which are utterly and directly contrary to the known laws
‘ and statutes, and freedom of this realm :—

‘ And whereas the said late King James the Second having abdi-
‘ cated the government, and the throne being thereby vacant, his
‘ Highness the Prince of Orange (whom it hath pleased Almighty
‘ God to make the glorious instrument of delivering this kingdom
‘ from Popery and arbitrary power) did (by the advice of the
‘ Lords Spiritual and Temporal, and divers principal persons of the
‘ Commons) cause letters to be written to the Lords Spiritual and
‘ Temporal, being Protestants, and other letters to the several
‘ counties, cities, universities, boroughs, and cinque-ports, for the
‘ choosing of such persons to represent them as were of right to
‘ be sent to Parliament, to meet and sit at Westminster upon the
‘ two-and-twentieth day of January, in this year one thousand six
‘ hundred eighty-and-eight, in order to such an establishment, as
‘ that their religion, laws, and liberties might not again be in dan-
‘ ger of being subverted : upon which letters, elections having been
‘ accordingly made :

‘ And thereupon the said Lords Spiritual and Temporal, and
‘ Commons, pursuant to their respective letters and elections, being
‘ now assembled in a full and free representation of this nation,
‘ taking into their most serious consideration the best means for at-
‘ taining the ends aforesaid ; do in the first place (as their ances-
‘ tors in like case have usually done), for the vindicating and assert-
‘ ing their ancient rights and liberties, declare : —

‘ 1. That the pretended power of suspending of laws, or the ex-
‘ ecution of laws by regal authority, without consent of Parliament,
‘ is illegal.

‘ 2. That the pretended power of dispensing with laws, or the
‘ execution of laws, by regal authority, as it hath been assumed
‘ and exercised of late, is illegal.

‘ 3. That the commission for erecting the late Court of Com-
‘ missioners for Ecclesiastical Causes, and all other commissions
‘ and courts of like nature, are illegal and pernicious.

‘ 4. That levying money for or to the use of the crown, by pre-
‘ tence of prerogative, without grant of Parliament, for longer
‘ time, or in other manner, than the same is or shall be granted, is
‘ illegal.

‘ 5. That it is the right of the subjects to petition the king,
‘ and all commitments and prosecutions for such petitioning are
‘ illegal.

‘ 6. That the raising or keeping a standing army within the king-
‘ dom in time of peace, unless it be with consent of Parliament, is
‘ against law.

‘ 7. That the subjects which are Protestants may have arms for
‘ their defence suitable to their conditions, and as allowed by law.

‘ 8. That election of members of Parliament ought to be free.

‘ 9. That the freedom of speech, and debates or proceedings in
‘ Parliament, ought not to be impeached or questioned in any court
‘ or place out of Parliament.

‘ 10. That excessive bail ought not to be required, nor excessive
‘ fines imposed, nor cruel and unusual punishments inflicted.

‘ 11. That jurors ought to be duly impanelled and returned, and
‘ jurors which pass upon men in trials for high treason ought to be
‘ freeholders.

‘ 12. That all grants and promises of fines and forfeitures of
‘ particular persons before conviction, are illegal and void.

‘ 13. And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, Parliaments ought to be held frequently.

‘ And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties ; and that no declarations, judgments, doings, or proceedings to the prejudice of the people, in any of the said premises, ought in any wise to be drawn hereafter into consequence or example.

‘ To which demand of their rights they are particularly encouraged by the declaration of his Highness the Prince of Orange, as being the only means for obtaining a full redress and remedy therein.

‘ Having therefore an entire confidence, that his said Highness the Prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights, which they have here asserted, and from all other attempts upon their religion, rights, and liberties, —

‘ II. The said Lords Spiritual and Temporal, and Commons, assembled at Westminster, do resolve, That William and Mary, Prince and Princess of Orange, be, and be declared, King and Queen of England, France, and Ireland, and the dominions thereunto belonging, to hold the crown and royal dignity of the said kingdoms and dominions to them, the said prince and princess, during their lives, and the life of the survivor of them ; and that the sole and full exercise of the regal power be only in and executed by the said Prince of Orange, in the names of the said prince and princess, during their joint lives ; and after their deceases, the said crown and royal dignity of the said kingdoms and dominions to be to the heirs of the body of the said princess ; and for default of such issue, to the Princess Anne of Denmark, and the heirs of her body ; and for default of such issue, to the heirs of the body of the said Prince of Orange. And the Lords Spiritual and Temporal, and Commons, do pray the said prince and princess to accept the same accordingly.

‘ III. And that the oaths hereafter mentioned be taken by all persons of whom the oaths of allegiance and supremacy might be required by law, instead of them ; and that the said oaths of allegiance and supremacy be abrogated.

‘ I, A. B. do sincerely promise and swear, That I will be faithful,

‘and bear true allegiance, to their Majesties King William and
‘Queen Mary :

So help me God.’

‘I, A. B. do swear, That I do from my heart abhor, detest, and
‘abjure, as impious and heretical, that damnable doctrine and po-
‘sition, *That princes excommunicated or deprived by the Pope, or*
‘*any authority of the See of Rome, may be deposed or murdered*
‘*by their subjects, or any other whatsoever.* And I do declare,
‘That no foreign prince, person, prelate, state, or potentate hath,
‘or ought to have, any jurisdiction, power, superiority, præmi-
‘nence, or authority, ecclesiastical or spiritual, within this realm :

So help me God.’

IV. Upon which their said Majesties did accept the crown and royal dignity of the kingdoms of England, France, and Ireland, and the dominions thereunto belonging, according to the resolution and desire of the said Lords and Commons contained in the said Declaration.

V. And thereupon their Majesties were pleased, that the said Lords Spiritual and Temporal, and Commons, being the two Houses of Parliament, should continue to sit, and with their Majesties’ royal concurrence make effectual provision for the settlement of the religion, laws, and liberties of this kingdom, so that the same for the future might not be in danger again of being subverted ; to which the said Lords Spiritual and Temporal, and Commons, did agree, and proceed to act accordingly.

VI. Now in pursuance of the premises, the said Lords Spiritual and Temporal, and Commons, in Parliament assembled, for the ratifying, confirming, and establishing the said Declaration, and the articles, clauses, matters, and things therein contained, by the force of a law made in due form by authority of Parliament, do pray that it may be declared and enacted, That all and singular the rights and liberties asserted and claimed in the said Declaration are the true, ancient, and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed, and taken to be, and that all and every the particulars aforesaid shall be firmly and strictly holden and observed, as they are expressed in the said Declaration ; and all officers and ministers whatsoever shall serve their Majesties and their successors according to the same in all times to come.

VII. And the said Lords Spiritual and Temporal, and Commons, seriously considering how it hath pleased Almighty God, in his marvellous providence, and merciful goodness to this nation, to provide and preserve their said Majesties' royal persons most happily to reign over us upon the throne of their ancestors, for which they render unto him from the bottom of their hearts their humble thanks and praises, do truly, firmly, assuredly, and in the sincerity of their hearts think, and do hereby recognize, acknowledge, and declare, That King James the Second having abdicated the government, and their Majesties' having accepted the crown and royal dignity as aforesaid, their said Majesties did become, were, are, and of right ought to be, by the laws of this realm, our sovereign liege lord and lady, King and Queen of England, France, and Ireland, and the dominions thereunto belonging, in and to whose princely persons the royal state, crown, and dignity of the said realms, with all honors, stiles, titles, regalities, prerogatives, powers, jurisdictions, and authorities to the same belonging and appertaining, are most fully, rightfully, and entirely invested and incorporated, united, and annexed.

VIII. And for preventing all questions and divisions in this realm, by reason of any pretended titles to the crown, and for preserving a certainty in the succession thereof, in and upon which the unity, peace, tranquillity, and safety of this nation doth, under God, wholly consist and depend, the said Lords Spiritual and Temporal, and Commons, do beseech their Majesties that it may be enacted, established, and declared, That the crown and regal government of the said kingdoms and dominions, with all and singular the premises thereunto belonging and appertaining, shall be and continue to their said Majesties, and the survivor of them, during their lives, and the life of the survivor of them : and that the entire, perfect, and full exercise of the regal power and government be only in, and executed by, his Majesty, in the names of both their Majesties, during their joint lives : and after their deceases the said crown and premises shall be and remain to the heirs of the body of her Majesty ; and for default of such issue, to her Royal Highness the Princess Anne of Denmark, and the heirs of her body ; and for default of such issue, to the heirs of the body of his said Majesty : and thereunto the said Lords Spiritual and Temporal, and Commons, do, in the name of all the people afore-

said, most humbly and faithfully submit themselves, their heirs and posterities for ever ; and do faithfully promise, that they will stand to, maintain, and defend their said Majesties, and also the limitation and succession of the crown herein specified and contained, to the utmost of their powers, with their lives and estates, against all persons whatsoever that shall attempt anything to the contrary.

IX. And whereas it hath been found by experience, that it is inconsistent with the safety and welfare of this Protestant kingdom to be governed by a Popish prince, or by any king or queen marrying a Papist, the said Lords Spiritual and Temporal, and Commons, do further pray that it may be enacted, That all and every person and persons that is, are, or shall be reconciled to, or shall hold communion with, the See or Church of Rome, or shall profess the Popish religion, or shall marry a Papist, shall be excluded, and be for ever incapable to inherit, possess, or enjoy the crown and government of this realm, and Ireland, and the dominions thereunto belonging, or any part of the same, or to have, use, or exercise any regal power, authority, or jurisdiction within the same ; and in all and every such case or cases, the people of these realms shall be, and are hereby, absolved of their allegiance ; and the said crown and government shall from time to time descend to, and be enjoyed by, such person or persons, being Protestants, as should have inherited and enjoyed the same in case the said person or persons so reconciled, holding communion, or professing or marrying as aforesaid, were naturally dead.

X. And that every king and queen of this realm, who at any time hereafter shall come to and succeed in the imperial crown of this kingdom, shall on the first day of the meeting of the first Parliament next after his or her coming to the crown, sitting in his or her throne in the House of Peers, in the presence of the Lords and Commons therein assembled, or at his or her coronation, before such person or persons who shall administer the coronation oath to him or her, at the time of his or her taking the said oath (which shall first happen), make, subscribe, and audibly repeat the Declaration mentioned in the statute made in the thirtieth year of the reign of King Charles the Second, intituled, *An Act for the more effectual preserving the king's person and government, by disabling Papists from sitting in either House of Parliament.* But if it shall happen, that such king or queen, upon his or her

succession to the crown of this realm, shall be under the age of twelve years, then every such king or queen shall make, subscribe, and audibly repeat the said Declaration at his or her coronation, on the first day of the meeting of the first Parliament, as aforesaid, which shall first happen after such king or queen shall have attained the said age of twelve years.

XI. All which their Majesties are contented and pleased shall be declared, enacted, and established by authority of this present Parliament, and shall stand, remain, and be the law of this realm for ever; and the same are, by their said Majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the authority of the same, declared, enacted, and established accordingly.

XII. And be it further declared and enacted by the authority aforesaid, That from and after this present session of Parliament, no dispensation by *non obstante* of or to any statute, or any part thereof, shall be allowed, but that the same shall be held void and of no effect, except a dispensation be allowed of in such statute, and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of Parliament.

XIII. Provided that no charter, or grant, or pardon, granted before the three-and-twentieth day of October in the year of our Lord one thousand six hundred eighty-nine, shall be anyways impeached or invalidated by this act, but that the same shall be and remain of the same force and effect in law, and no other than as if this act had never been made.

[“THE BODY OF LIBERTIES,” enacted by the Colony of Massachusetts in 1641, was one of the earliest, and certainly the most remarkable, of the codes or systems of law established by the British Colonists of North America. In Virginia, laws were enacted from time to time, as occasion required ; and in 1632, as well as at several subsequent periods, these particular laws were consolidated into a single statute. But these enactments were almost exclusively local in their character, being intended to meet the peculiar wants and circumstances of the people in their new home. For all ordinary occasions, for the punishment of common offences as well as for the adjudication of disputes between man and man, the Virginians seem to have relied upon the principles of the English Common Law, however imperfectly these may have been understood and enforced by them. The aim of the Massachusetts Body of Liberties was far more general ; it appears to have been designed not so much as a supplement to English law as a substitute for it. The Charter authorized the Company to make whatever laws or regulations might be found needful, with this single restriction, — that they should not be repugnant to the laws of England. The obvious meaning of this permission was, that the whole body of the English law should remain in force, excepting only such portions of it as were plainly inapplicable in a feeble and distant settlement, and with the addition of such by-laws or minor regulations as their peculiar situation might require. But the early emigrants were by no means inclined so to understand it. Their purpose was to establish a separate religious community, modelled and governed after a plan of their own. As they construed the Charter, no portion of the English law was to be in force among them till they had expressly re-enacted it. They were to erect a new frame of government and a new system of law, following their own ideas of expediency and right, and aiming only to avoid direct and violent contradiction of the statutes

of the mother country. They wished to reaffirm most of the beneficent articles of the Great Charter and other ancient bulwarks of English freedom, but to combine with them such enactments from the laws of Moses and such general commands of Scripture as were suited for the peculiar kind of theocratic and patriarchal aristocracy which they were endeavoring to establish. Till this scheme could be safely carried out, — and great caution was obviously necessary in executing it, for fear of exciting the jealousy of the authorities at home, — the magistrates, elected annually, were to manage the affairs of the Colony, to decide controversies between individuals, and to punish crimes, at their discretion, or with only the Scriptures, their own consciences, and the known wishes and principles of the Colonists, for their guides. This was the patriarchal system; it was the government of an Arab sheikh over his tribe. There was a sufficient check upon it, in the fact that its administrators held office only for one year, at the end of which time, if they became unpopular, they could be turned out and others put in their place.

But it would be idle to expect that any people would submit to such a government any longer than the exigencies of the case rendered it absolutely necessary. We are not surprised to learn, therefore, that, at a meeting of the General Court (the colonial legislative assembly), in May, 1635, “the deputies having conceived great danger to our state in regard that our magistrates, for want of positive laws, in many cases might proceed according to their discretions, it was agreed, that some men should be appointed to frame a body of grounds of laws, in resemblance to a Magna Charta, which, being allowed by some of the ministers and the General Court, should be received for fundamental laws.” The magistrates were not very forward to comply with this order, but desired delay for two reasons. “One was, want of sufficient experience of the nature and disposition of the people, considered with the condition of the country and other circumstances, which made them conceive that such laws would be fittest for us, which should arise *pro re natâ*, upon occasions, etc., and so the laws of England and other states grew, and therefore the fundamental laws of England are called customs, *consuetudines*.” The cause here assigned shows a clear perception of the nature and character of the English Constitution; — that it was not a rigid and inflexible system, framed beforehand, to force the customs and the polity of future generations into such a shape as the imperfect wisdom of earlier times might deem best, and which, because inflexible and bound together as one consistent whole, should any discrepancy afterwards arise between it and the wishes and exigencies of the state, could not be modified and bent to the emergency, but must be shattered in pieces by revolutionary force; — but that its excellence and its stability were attributable to the fact, that it had

been gradually developed out of the ideas and habits of the people, conforming itself to the varying necessities of each successive generation, and affording resources for every occasion that could arise.

The second reason assigned is equally indicative of the prudence and sagacity of those who then ruled the infant commonwealth. "2. For that it would professedly transgress the limits of our Charter, which provide, we shall make no laws repugnant to the laws of England; *and that we are assured we must do.* But to raise up laws by practice and custom had been no transgression; as in our church discipline, and in matters of marriage, *to make a law* that marriages should not be solemnized by ministers *is* repugnant to the laws of England; *but to bring it to a custom by practice* for the *magistrates* to perform it, is no law made repugnant," etc. They wished quietly to administer the affairs of the Colony upon principles suited to its occasions and the character of the people, without expressly enacting those principles into laws, which would inevitably attract the censure of the home government. These principles would thus become corroborated by long usage, and form a body of consuetudinary law, which, from the nature of the English Constitution, would be equally valid with express enactments. And the result vindicated their sagacity. If they had not evaded the first demands of the people, their new code would probably have been disallowed by the arbitrary government of Charles I., before it could have been fairly put in action. They postponed the enactment till 1641, when the authority had, in the main, passed away from Charles into the hands of their good Puritanic friends in the Long Parliament; and then, in the great excitement into which all England was thrown, the bold act of Massachusetts, in establishing its own system of law, escaped without notice. At the restoration of Charles II. in 1660, as it had been nearly twenty years in force, it had acquired a right by prescription, and the home government did not attempt to subvert it.

Yet the magistrates found it not an easy task to evade or postpone compliance with the impatient demands of a law-loving people for a regular system of law. On various pretexts, they eluded the first request, in 1635; but two committees were appointed, one in 1636, of which the Rev. Mr. Cotton was a member, and another in 1638, to which Mr. Nathaniel Ward belonged, to frame the outlines of such a code of law as might be suitable for the Colony. Mr. Cotton acted very promptly, and offered at once a digest of laws, taken almost entirely from the Old Testament, and called by him "A Model of Moses his Judicials, compiled in an exact method." It bore this very appropriate motto from Isaiah: "Jehovah is our Judge, Jehovah is our Lawgiver, Jehovah is our King; He will save us." But notwithstanding the theocratic predilections of our forefathers, they had too much sagacity not to per-

ceive, that the Jewish law, as a whole, was inappropriate to their situation and insufficient for their wants. They seem to have quietly put Mr. Cotton's code on the shelf, and they adopted, in 1641, the far more judicious system called "The Body of Liberties," devised and compiled by Nathaniel Ward, minister of the church in Ipswich, but formerly a practitioner of law in England. Thus he united clerical and legal learning as qualifications for his task; and his work remained the foundation of the jurisprudence of New England for half a century, the larger portion of it being copied into all the digests and codes that were subsequently framed, and Connecticut borrowing a great part of it soon after its publication.

Yet this code in its primitive form was not printed, and having been soon superseded by the later digests that were based upon it, even the manuscript copies were lost, and doubts were entertained whether any such instrument, distinct from Cotton's theocratic project, had ever existed. At last, about a quarter of a century ago, Mr. F. C. Gray was fortunate enough to find a manuscript copy of it, in the handwriting of the time when it was in force, which, after it had been deciphered and identified beyond all question, he published, with a valuable historical introduction, in the twenty-eighth volume of the Collections of the Massachusetts Historical Society. With his permission and that of the Society, it is here reprinted, the spelling, punctuation, and use of capital letters being here reduced to the modern standard. Mr. Gray has expressed the following opinion of it, which I copy, because it seems to me very just, and because his great legal learning and ability amply qualify him to form an estimate of its merits. "The Body of Liberties," he says, "exhibits throughout the hand of the practised lawyer, familiar with the principles and the securities of English liberty; and although it retains some strong traces of the times, it is, in the main, far in advance of them, and in several respects in advance of the English Common Law at the present day. It shows that our ancestors, instead of deducing all their laws from the books of Moses, established at the outset a code of fundamental principles, which, taken as a whole, for wisdom, equity, adaptation to the wants of their community, and a liberality of sentiment superior to the age in which it was written, may fearlessly challenge a comparison with any similar production, from Magna Charta itself to the latest Bill of Rights that has been put forth in England or America."

Indeed, anxious as its authors were to incorporate into it the distinctive features of their own peculiar civil and religious polity, they still showed the instinctive respect of Englishmen for established law and the ancient safeguards of English freedom, by often preserving the language, while they borrowed largely from the spirit, of the Great Charter and the Common Law. What they

borrowed, they were careful to enlarge and strengthen; they strove to lay broader and deeper the foundation of civil freedom, scrupulous justice, and popular rights. They showed the spirit which was to be expected from Englishmen who had left their mother land during the dark period which intervened between the Petition of Right and the meeting of the Long Parliament, when the Constitution was virtually in abeyance, and Charles I. was governing without a Parliament, and without law. It was fortunate, that so much of the English law was preserved, both in principle and phraseology, in the Body of Liberties; for they were soon accused of violating that restriction in their Charter which bound them not to make any laws repugnant to the laws of England, and it was intimated that complaint to this effect would be made to the Commissioners established by the Long Parliament for superintending the affairs of the Colonies, and that the consequence might be the forfeiture of the Charter. In answer to this charge, the Massachusetts General Court published a Declaration, in 1646, in which, among other things, they affirm that "our government itself is framed according to our Charter and the fundamental and common laws of England, and carried on according to the same, (taking the words of eternal truth and righteousness along with them, as that rule by which all kingdoms and jurisdictions must render account of every act and administration at the last day,) with as bare allowance for the disproportion between such an ancient, populous, wealthy kingdom, and so poor an infant, thin colony, as reason can afford. And because this will better appear by comparing particulars, we shall draw them into a parallel. In the one column we will set down the fundamental and common laws and customs of England, beginning with Magna Charta, and so go on to such others as we had occasion to make use of, etc.; in the other column we will set down the sum of such laws and customs as are in force and use in this jurisdiction." Accordingly, thirty-eight of the fundamental laws of Massachusetts, mostly taken from The Body of Liberties, but a few being said to be established only by custom, are printed over against a corresponding number of legal principles taken from Magna Charta and the English Common Law, so as to show that they harmonize perfectly with each other. In most instances, the comparison is a fair one, and the coincidence is real as well as apparent; but in a few cases, it must be admitted, the two laws are so imperfectly stated that they appear to coincide, while in fact there is a glaring discrepancy between them. Thus, it is stated to be a principle both of "the fundamentals" of Massachusetts and of the Common Law, that "the eldest son is preferred before the younger in the ancestor's inheritance." This is true; but the extent of the preference is not stated. In fact, the English law gives the whole of the real estate to the oldest son, while in Massachusetts he received only a double share. There are a few other evasions of a like character.]

THE BODY OF LIBERTIES

OF THE

MASSACHUSETTS COLONY IN NEW ENGLAND.

ENACTED BY THE GENERAL COURT, A. D. 1641.

THE free fruition of such liberties, immunities, and privileges as humanity, civility, and Christianity call for as due to every man in his place and proportion, without impeachment and infringement, hath ever been and ever will be the tranquillity and stability of churches and commonwealths ; and the denial or deprivation thereof, the disturbance, if not the ruin, of both.

We hold it, therefore, our duty and safety, whilst we are about the further establishing of this government, to collect and express all such freedoms as, for present, we foresee may concern us and our posterity after us ; and to ratify them with our solemn consent.

We do, therefore, this day, religiously and unanimously decree and confirm these following rights, liberties, and privileges concerning our churches and civil state, to be respectively, impartially, and inviolably enjoyed and observed throughout our jurisdiction for ever.

1. No man's life shall be taken away, no man's honor or good name shall be stained, no man's person shall be arrested, restrained, banished, dismembered, nor anyways punished, no man shall be deprived of his wife or children, no man's goods or estate shall be taken away from him, nor any way endamaged, under color of law or countenance of authority, unless it be by virtue or equity of some express law of the country warranting the same, established by a General Court and sufficiently published, or, in case of the defect of a law in any particular case, by the Word of God. And in capital cases, or in cases concerning dismembering or banishment, according to that Word to be judged by the General Court.*

* This first Liberty is evidently an expansion and a paraphrase of the fa-

2. Every person within this jurisdiction, whether inhabitant or foreigner, shall enjoy the same justice and law that is general for the plantation, which we constitute and execute one towards another, without partiality or delay.

3. No man shall be urged to take any oath or subscribe any articles, covenants, or remonstrance, of a public and civil nature, but such as the General Court hath considered, allowed, and required.

4. No man shall be punished for not appearing at or before any civil assembly, court, council, magistrate, or officer, nor for the omission of any office or service, if he shall be necessarily hindered by any apparent act or providence of God, which he could neither foresee nor avoid. Provided that this law shall not prejudice any person of his just cost or damage in any civil action.

5. No man shall be compelled to any public work or service, unless the press be grounded upon some act of the General Court, and have reasonable allowance therefor.

6. No man shall be pressed in person to any office, work, wars, or other public service, that is necessarily and sufficiently exempted by any natural or personal impediment, as by want of years, greatness of age, defect of mind, failing of senses, or impotency of limbs.

7. No man shall be compelled to go out of the limits of this plantation upon any offensive wars which this Commonwealth, or any of our friends or confederates, shall voluntarily undertake; but only upon such vindictive and defensive wars in our own behalf, or the behalf of our friends and confederates, as shall be enterprized by the counsel and consent of a Court General, or by authority derived from the same.

8. No man's cattle or goods, of what kind soever, shall be pressed or taken for any public use or service, unless it be by warrant grounded upon some act of the General Court, nor without such reasonable prices and hire as the ordinary rates of the country do afford. And if his cattle or goods shall perish or suffer damage in such service, the owner shall be sufficiently recompensed.*

mous 46th article of the Great Charter; — "No freeman shall be taken, or imprisoned, or disseized," &c.

* This is an expansion of the 36th article of the Great Charter.

9. No monopolies shall be granted or allowed amongst us, but of such new inventions that are profitable to the country, and that for a short time.

10. All our lands and heritages shall be free from all fines and licenses upon alienations, and from all heriots, wardships, liveries, primer-seisins, year day and waste, escheats, and forfeitures, upon the deaths of parents or ancestors, be they natural, casual, or judicial.*

11. All persons which are of the age of twenty-one years, and of right understanding and memories, whether excommunicated or condemned, shall have full power and liberty to make their wills and testaments, and other lawful alienations of their lands and estates.

12. Every man, whether inhabitant or foreigner, free or not free, shall have liberty to come to any public court, council, or town-meeting, and, either by speech or writing, to move any lawful, seasonable, and material question, or to present any necessary motion, complaint, petition, bill, or information, whereof that meeting hath proper cognizance, so it be done in convenient time, due order, and respective [respectful] manner.†

13. No man shall be rated [taxed] here for any estate or revenue he hath in England, or in any foreign parts, till it be transported hither.

* Fines on alienation, heriots, liveries, primer-seisins, wardships, and the like, were the incidents or emoluments of seignior, that remained after the military character of fiefs had been nearly effaced. They were not finally abolished in England till the time of Charles II., when an act of Parliament took them all away, and converted all the old fendal tenures of land (except grand sergeanty, which is merely honorary and nominal) into common socage. The Great Charter had regulated and mitigated these exactions; the Parliament of Charles II. abolished them altogether, giving the king, as a compensation for the revenue thus surrendered, the proceeds of an excise on beer and some other liquors. This Liberty, therefore, established by the General Court of Massachusetts in 1641, anticipated by about twenty years a most important amelioration of the law of England.

† The right of petition and remonstrance, which is considered of so much importance nowadays, cannot be said to have been fully established in England before the Bill of Rights, in 1689. See *ante*, p. 46. 5. This clause in the Bill of Rights was suggested by the famous trial of the seven bishops, a year or two before. The right was completely established in Massachusetts by this Liberty nearly half a century before.

14. Any conveyance or alienation of land or other estate whatsoever, made by any woman that is married, any child under age, idiot, or distracted person, shall be good, if it be passed and ratified by the consent of a General Court.

15. All covenous or fraudulent alienations or conveyances of lands, tenements, or any hereditaments, shall be of no validity to defeat any man from due debts or legacies, or from any just title, claim, or possession, of that which is so fraudulently conveyed.

16. Every inhabitant that is an householder shall have free fishing and fowling in any great ponds and bays, coves, and rivers, so far as the sea ebbs and flows within the precincts of the town where they dwell, unless the freemen of the same town, or the General Court, have otherwise appropriated them; provided that this shall not be extended to give leave to any man to come upon others' property without their leave.

17. Every man of or within this jurisdiction shall have free liberty, notwithstanding any civil power, to remove both himself and his family at their pleasure out of the same, provided there be no legal impediment to the contrary.*

Rights, Rules, and Liberties concerning Judicial Proceedings.

18. No man's person shall be restrained or imprisoned by any authority whatsoever, before the law hath sentenced him thereto, if he can put in sufficient security, bail, or mainprise for his appearance, and good behavior in the mean time, unless it be in crimes capital, and contempts in open court, and in such cases where some express act of court doth allow it.†

19. If, in a General Court, any miscarriage shall be amongst the Assistants, when they are by themselves, that may deserve an admonition or fine under twenty shillings, it shall be examined and sentenced among themselves; if amongst the Deputies, when they are by themselves, it shall be examined and sentenced amongst themselves; if it be when the whole Court is together, it shall be judged by the whole Court, and not severally, as before.‡

* See the 48th and 50th articles of the Great Charter.

† This Liberty is an anticipation of the Habeas Corpus Act passed nearly forty years afterwards.

‡ The Board of Assistants under the old Charter in Massachusetts was an anomalous body, that performed the functions of an upper house in the legisla-

20. If any which are to sit as judges in any other court shall demean themselves offensively in the court, the rest of the judges present shall have power to censure him for it ; if the cause be of a high nature, it shall be presented to and censured at the next superior court.

21. In all cases where the first summons are not served six days before the court, and the cause briefly specified in the warrant, where appearance is to be made by the party summoned, it shall be at his liberty whether he will appear or no ; except all cases that are to be handled in courts suddenly called, upon extraordinary occasions. In all cases where there appears present and urgent cause, any Assistant or officer appointed shall have power to make out attachments for the first summons.

22. No man, in any suit or action against another, shall falsely pretend great debts or damages to vex his adversary ; if it shall appear any doth so, the court shall have power to set a reasonable fine on his head.

23. No man shall be adjudged to pay for detaining any debt from any creditor above eight pounds in the hundred for one year, and not above that rate proportionable for all sums whatsoever ; neither shall this be a color or countenance to allow any usury amongst us, contrary to the law of God.*

24. In all trespasses or damages done to any man or men, if it can be proved to be done by the mere default of him or them to whom the trespass is done, it shall be judged no trespass, nor any damage given for it.

25. No summons, pleading, judgment, or any kind of proceeding in court or course of justice shall be abated, arrested, or reversed, upon any kind of circumstantial errors or mistakes, if the person and cause be rightly understood and intended by the court.†

26. Every man that findeth himself unfit to plead his own cause

ture, of a council to the Governor, and of a court which heard and determined both civil and criminal causes.

* Eight per cent. was about the current rate of interest at this time allowed in England. Though our ancestors, following the Jewish law, forbade lending money on usury, it appears from this Liberty that they allowed interest to be charged on any money detained beyond the time when payment was due.

† This Liberty, if it were in force at the present day, would remove one great cause of litigation and of the uncertainty of the law.

in any court, shall have liberty to employ any man against whom the court doth not except, to help him, provided he give him no fee or reward for his pains. This shall not exempt the party himself from answering such questions in person as the court shall think meet to demand of him.*

27. If any plaintiff shall give into any court a declaration of his cause in writing, the defendant shall also have liberty and time to give in his answer in writing; and so in all further proceedings between party and party, so it doth not further hinder the despatch of justice than the court shall be willing unto.

28. The plaintiff in all actions brought in any court shall have liberty to withdraw his action, or to be nonsuited before the jury hath given in their verdict; in which case, he shall always pay full cost and charges to the defendant, and may afterwards renew his suit at another court, if he please.

29. In all actions at law, it shall be the liberty of the plaintiff and defendant, by mutual consent, to choose whether they will be tried by the bench or by a jury, unless it be where the law upon just reason hath otherwise determined. The like liberty shall be granted to all persons in criminal cases.

30. It shall be in the liberty both of plaintiff and defendant, and likewise every delinquent (to be judged by a jury), to challenge any of the jurors. And if his challenge be found just and reasonable by the bench, or the rest of the jury, as the challenger shall choose, it shall be allowed him, and *tales de circumstantibus* impanelled in their room.

31. In all cases where evidence is so obscure or defective that the jury cannot clearly and safely give a positive verdict, whether it be a grand or petit jury, it shall have liberty to give a *non liquit*, or a special verdict, in which last, that is, in a special verdict, the judgment of the cause shall be left to the court; and all jurors shall have liberty, in matters of fact, if they cannot find the main issue, yet to find and present in their verdict so much as they can. If the bench and jurors shall so suffer at any time about their verdict, that either of them cannot proceed with peace of conscience,

* This is an anticipation of a very important amendment of the English law, which, for more than a century longer, would not allow a person charged with a capital offence to employ counsel to aid him, except on points of law.

the case shall be referred to the General Court, who shall take the question from both and determine it.*

32. Every man shall have liberty to replevy his cattle or goods impounded, distrained, seized, or extended, unless it be upon execution after judgment, and in payment of fines. Provided he puts in good security to prosecute his replevin, and to satisfy such demands as his adversary shall recover against him in law.

33. No man's person shall be arrested, or imprisoned upon execution or judgment, for any debt or fine, if the law can find competent means of satisfaction otherwise from his estate; and if not, his person may be arrested and imprisoned, where he shall be kept at his own charge, not the plaintiff's, till satisfaction be made, unless the court that had cognizance of the cause, or some superior court, shall otherwise provide.

34. If any man shall be proved and judged a common barrator, vexing others with unjust, frequent, and endless suits, it shall be in the power of courts both to deny him the benefit of the law, and to punish him for his barratry.†

35. No man's corn nor hay that is in the field or upon the cart, nor his garden stuff, nor anything subject to present decay, shall be taken in any distress, unless he that takes it doth presently bestow it where it may not be embezzled, nor suffer spoil or decay, or give security to satisfy the worth thereof, if it comes to any harm.

36. It shall be in the liberty of every man, cast, condemned, or sentenced in any cause in any inferior court, to make their appeal to the Court of Assistants, provided they tender their appeal, and put in security to prosecute it, before the court be ended wherein they were condemned, and within six days next ensuing put in good security, before some Assistant, to satisfy what his adversary shall recover against him; and if the cause be of a criminal nature, for his good behavior and appearance. And every man shall have liberty to complain to the General Court of any injustice done him in any Court of Assistants, or other.

37. In all cases where it appears to the court that the plaintiff

* These last three Liberties suggest important, but cautious, ameliorations of the Common Law respecting juries, far in advance of their age.

† Barrator is the technical designation of one who keeps up needless and vexatious suits and quarrels.

hath willingly and wittingly done wrong to the defendant in commencing and prosecuting an action or complaint against him, they shall have power to impose upon him a proportionable fine to the use of the defendant, or accused person, for his false complaint or clamor.

38. Every man shall have liberty to record in the public rolls of any court, any testimony given upon oath in the same court, or before two Assistants, or any deed or evidence legally confirmed there, to remain *in perpetuam rei memoriam*, that is, for perpetual memorial or evidence upon occasion.

39. In all actions, both real and personal, between party and party, the court shall have power to respite execution for a convenient time, when in their prudence they see just cause so to do.

40. No conveyance, deed, or promise whatsoever shall be of validity, if it be gotten by illegal violence, imprisonment, threatening, or any kind of forcible compulsion called duress.

41. Every man that is to answer for any criminal cause, whether he be in prison or under bail, his cause shall be heard and determined at the next court that hath proper cognizance thereof, and may be done without prejudice of justice.

42. No man shall be twice sentenced by civil justice for one and the same crime, offence, or trespass.

43. No man shall be beaten with above forty stripes, nor shall any true gentleman, nor any man equal to a gentleman, be punished with whipping, unless his crime be very shameful, and his course of life vicious and profligate.

44. No man condemned to die shall be put to death within four days next after his condemnation, unless the court see special cause to the contrary, or in case of martial law, nor shall the body of any man so put to death be unburied twelve hours, unless it be in case of anatomy.

45. No man shall be forced by torture to confess any crime against himself nor any other, unless it be in some capital case, where he is first fully convicted by clear and sufficient evidence to be guilty; after which, if the cause be of that nature, that it is very apparent there be other conspirators or confederates with him, then he may be tortured, yet not with such tortures as be barbarous and inhuman.

46. For bodily punishments, we allow amongst us none that are inhuman, barbarous, or cruel.

47. No man shall be put to death without the testimony of two or three witnesses, or that which is equivalent thereunto.

48. Every inhabitant of the country shall have free liberty to search and view any rolls, records, or registers of any court or office except the Council, and to have a transcript or exemplification thereof written, examined, and signed by the hand of the officer of the office, paying the appointed fees therefor.

49. No free man shall be compelled to serve upon juries above two courts in a year, except grand-jurymen, who shall hold two courts together, at the least.

50. All jurors shall be chosen continually by the freemen of the town where they dwell.

51. All Associates selected at any time to assist the Assistants in inferior courts, shall be nominated by the towns belonging to that court, by orderly agreement among themselves.

52. Children, idiots, distracted persons, and all that are strangers, or new-comers to our plantation, shall have such allowances and dispensations in any cause, whether criminal or other, as religion and reason require.

53. The age of discretion, for passing away of lands or such kind of hereditaments, or for giving of votes, verdicts, or sentence in any civil courts or causes, shall be one-and-twenty years.

54. Whensoever anything is to be put to vote, any sentence to be pronounced, or any other matter to be proposed, or read in any court or assembly, if the president or moderator thereof shall refuse to perform it, the major part of the members of that court or assembly shall have power to appoint any other meet man of them to do it; and, if there be just cause, to punish him that should, and would not.

55. In all suits or actions in any court, the plaintiff shall have liberty to make all the titles and claims to that he sues for he can. And the defendant shall have liberty to plead all the pleas he can in answer to them, and the court shall judge according to the entire evidence of all.

56. If any man shall behave himself offensively at any town-meeting, the rest of the freemen then present shall have power to sentence him for his offence; so be it the mulct or penalty exceed not twenty shillings.

57. Whensoever any person shall come to any very sudden, un-

timely, and unnatural death, some Assistant, or the constables of that town, shall forthwith summon a jury of twelve freemen to inquire of the cause and manner of their death, and shall present a true verdict thereof to some near Assistant, or the next court to be held for that town, upon their oath.

Liberties more peculiarly concerning the Freemen.

58. Civil authority hath power and liberty to see the peace, ordinances, and rules of Christ observed in every church according to his word ; so it be done in a civil, and not in an ecclesiastical way.

59. Civil authority hath power and liberty to deal with any church-member in a way of civil justice, notwithstanding any church relation, office, or interest.

60. No church censure shall degrade or depose any man from any civil dignity, office, or authority he shall have in the Commonwealth.*

61. No magistrate, juror, officer, or other man, shall be bound to inform, present, or reveal any private crime or offence, wherein there is no peril or danger to this plantation or any member thereof, when any necessary tie of conscience binds him to secrecy grounded upon the Word of God, unless it be in case of testimony lawfully required.

62. Any shire or town shall have liberty to choose their Deputies, whom and where they please, for the General Court ; so be it they be freemen, and have taken their oath of fealty, and inhabiting in this jurisdiction.

63. No Governor, Deputy-Governor, Assistant, Associate, or grand-juryman at any court, nor any Deputy for the General Court, shall at any time bear his own charges at any court, but their necessary expenses shall be defrayed either by the town or shire on whose service they are, or by the country in general.

64. Every action between party and party, and proceedings

* These Liberties (58 - 60) define and establish very clearly the notions of our ancestors respecting the relation between church and state. Notwithstanding the vast influence of the clergy, and the Mosaic predilections of the magistrates and the people, they still wisely held that the ecclesiastical was subject to the civil power. These three Liberties alone are enough to prove that the early government of Massachusetts was not a theocracy.

against delinquents in criminal causes, shall be briefly and distinctly entered on the rolls of every court by the recorder thereof; that such actions be not afterwards brought again, to the vexation of any man.

65. No custom or prescription shall ever prevail amongst us in any moral cause; — our meaning is, [no prescription shall] maintain anything that can be proved to be morally sinful by the Word of God.

66. The freemen of every township shall have power to make such by-laws and constitutions as may concern the welfare of their town, provided they be not of a criminal, but only of a prudential nature, and that their penalties exceed not twenty shillings for one offence; and that they be not repugnant to the public laws and orders of the country. And if any inhabitant shall neglect or refuse to observe them, they shall have power to levy the appointed penalties by distress.

67. It is the constant liberty of the freemen of this plantation to choose yearly, at the Court of Election, out of the freemen, all the general officers of this jurisdiction. If they please to discharge them at the day of election by way of vote, they may do it without showing cause. But if at any other General Court, we hold it due justice, that the reasons thereof be alleged and proved. By general officers, we mean our Governor, Deputy-Governor, Assistants, Treasurer, General of our wars, and our Admiral at sea, and such as are, or hereafter may be, of the like general nature.*

68. It is the liberty of the freemen to choose such Deputies for

* Just before the Massachusetts general election in 1634, there being some apprehension that the people would not re-elect the former magistrates, the Rev. "Mr. Cotton preached, and delivered this doctrine, that a magistrate ought not to be turned into the condition of a private man without just cause, no more than the magistrates might turn a private man out of his freehold without like public trial." But this doctrine was not much relished, and the people showed their dissent in a very practical manner. To adopt President Quincy's language, "They turned out Winthrop at the very same election, and put in Dudley. The year after, they turned out Dudley and put in Haynes. The year after, they turned out Haynes, and put in Vane." Having thus sufficiently vindicated their right, in 1637 they chose Winthrop again. Probably the recollection of Cotton's unlucky sermon suggested this article in the Body of Liberties.

the General Court out of themselves, either in their own towns or elsewhere, as they judge fittest. And because we cannot foresee what variety and weight of occasions may fall into future consideration, and what counsels we may stand in need of, we decree, that the Deputies (to attend the General Court in the behalf of the country) shall not any time be stated or inacted [elected] but from Court to Court, or at the most but for one year, that the country may have an annual liberty to do in that case what is most behoofful for the best welfare thereof.

69. No General Court shall be dissolved or adjourned without the consent of the major part thereof.

70. All freemen called to give any advice, vote, verdict, or sentence in any court, council, or civil assembly, shall have full freedom to do it according to their true judgments and consciences, so it be done orderly and inoffensively for the manner.

71. The Governor shall have a casting voice whensoever an equal vote shall fall out in the Court of Assistants, or General Assembly; so shall the president or moderator have in all civil courts or assemblies.

72. The Governor and Deputy-Governor jointly consenting, or any three Assistants concurring in consent, shall have power, out of court, to reprieve a condemned malefactor till the next quarter or General Court. The General Court only shall have power to pardon a condemned malefactor.

73. The General Court hath liberty and authority to send out any member of this Commonwealth, of what quality, condition, or office whatsoever, into foreign parts, about any public message or negotiation: Provided the party sent be acquainted with the affair he goeth about, and be willing to undertake the service.

74. The freemen of every town or township shall have full power to choose yearly, or for less time, out of themselves, a convenient number of fit men to order the planting or prudential occasions of that town, according to instructions given them in writing: Provided nothing be done by them contrary to the public laws and orders of the country; provided also, the number of such select persons be not above nine.

75. It is and shall be the liberty of any member or members of any court, council, or civil assembly, in cases of making or executing any order or law that properly concern religion, or any

cause capital, or wars, or subscription to any public articles or remonstrance, in case they cannot in judgment and conscience consent to that way the major vote or suffrage goes, to make their contra remonstrance or protestation in speech or writing, and, upon request, to have their dissent recorded in the rolls of that court; so it be done Christianly and respectively [respectfully] for the manner, and their dissent only be entered, without the reasons thereof, for the avoiding of tediousness.

76. Whensoever any jury of trials or jurors are not clear in their judgments or consciences concerning any cause wherein they are to give their verdict, they shall have liberty in open court to advise with any man they think fit to resolve or direct them, before they give in their verdict.

77. In all cases wherein any freeman is to give his vote, be it in point of election, making constitutions and orders, or passing sentence in any case of judicature, or the like, if he cannot see reason to give it positively one way or another, he shall have liberty to be silent, and not pressed to a determined vote.

78. The general or public treasure, or any part thereof, shall never be expended but by the appointment of a General Court, nor any shire treasure but by the appointment of the freemen thereof, nor any town treasure but by the freemen of that township.

Liberties of Women.

79. If any man at his death shall not leave his wife a competent portion of his estate, upon just complaint made to the General Court, she shall be relieved.

80. Every married woman shall be free from bodily correction or stripes by her husband, unless it be in his own defence upon her assault. If there be any just cause of correction, complaint shall be made to authority assembled in some court, from which only she shall receive it.

Liberties of Children.

81. When parents die intestate, the elder son shall have a double portion of his whole estate real and personal, unless the General Court, upon just cause alleged, shall judge otherwise.*

* Our ancestors here follow the law of Moses, rejecting the right of primo-

82. When parents die intestate, having no heirs male of their bodies, their daughters shall inherit as copartners, unless the General Court, upon just reason, shall judge otherwise.

83. If any parents shall wilfully and unreasonably deny any child timely or convenient marriage, or shall exercise any unnatural severity towards them, such children shall have free liberty to complain to authority for redress.

84. No orphan during their minority, which was not committed to tuition or service by the parents in their lifetime, shall afterwards be absolutely disposed of by any kindred, friend, executor, township, or church, nor by themselves, without the consent of some court, wherein two Assistants at least shall be present.

Liberties of Servants.

85. If any servants shall flee from the tyranny and cruelty of their masters to the house of any freeman of the same town, they shall be there protected and sustained till due order be taken for their relief; provided due notice thereof be speedily given to their masters, from whom they fled, and the next Assistant or constable where the party flying is harbored.

86. No servant shall be put off for above a year to any other, neither in the lifetime of their master, nor after their death by their executors or administrators, unless it be by consent of authority assembled in some court, or two Assistants.

87. If any man smite out the eye or tooth of his man-servant or maid-servant, or otherwise maim or much disfigure him, unless it be by mere casualty, he shall let them go free from his service, and he shall have such further recompense as the court shall allow him.

88. Servants that have served diligently and faithfully to the benefit of their masters seven years, shall not be sent away empty. And if any have been unfaithful, negligent, or unprofitable in their service, notwithstanding the good usage of their masters, they shall not be dismissed till they have made satisfaction according to the judgment of authority.

geniture, as it was and is established in England. This equal, or nearly equal, division of the estates of persons deceased, was the most effectual measure they could have adopted for fostering a republican spirit among the people, and preventing an aristocracy from ever gaining foothold on American ground.

Liberties of Foreigners and Strangers.

89. If any people of other nations professing the true Christian religion shall flee to us from the tyranny or oppression of their persecutors, or from famine, wars, or the like necessary and compulsory cause, they shall be entertained and succored amongst us, according to that power and prudence God shall give us.

90. If any ships or other vessels, be it friend or enemy, shall suffer shipwreck upon our coast, there shall be no violence or wrong offered to their persons or goods. But their persons shall be harbored and relieved, and their goods preserved in safety, till authority may be certified thereof, and shall take further order therein.

91. There shall never be any bond slavery, villeinage, or captivity amongst us, unless it be lawful captives taken in just wars, and such strangers as willingly sell themselves or are sold to us. And these shall have all the liberties and Christian usages which the law of God established in Israel concerning such persons doth morally require. This exempts none from servitude who shall be judged thereto by authority.

Of the Brute Creature.

92. No man shall exercise any tyranny or cruelty towards any brute creatures which are usually kept for man's use.

93. If any man shall have occasion to lead or drive cattle from place to place that is far off, so that they be weary, or hungry, or fall sick or lame, it shall be lawful to rest or refresh them, for a competent time, in any open place that is not corn, meadow, or inclosed for some peculiar use.

94. *Capital Laws.**

1.

If any man, after legal conviction, shall have or worship any other god but the Lord God, he shall be put to death.†

* In these laws defining capital offences, the peculiar religious tenets of our ancestors appear. They are nearly all borrowed directly from the Mosaic law, and are accompanied in the original with the references to Scripture texts which we have subjoined in the notes.

† Deut. xiii. 6, 10; xvii. 2, 6. Ex. xxii. 20.

2.

If any man or woman be a witch (that is, hath or consulteth with a familiar spirit), they shall be put to death.*

3.

If any person shall blaspheme the name of God, the Father, Son, or Holy Ghost, with direct, express, presumptuous, or high-handed blasphemy, or shall curse God in the like manner, he shall be put to death.†

4.

If any person commit any wilful murder, which is manslaughter committed upon premeditated malice, hatred, or cruelty, not in a man's necessary and just defence, nor by mere casualty against his will, he shall be put to death.‡

5.

If any person slayeth another suddenly in his anger, or cruelty, or passion, he shall be put to death.§

6.

If any person shall slay another through guile, either by poisoning or other such devilish practice, he shall be put to death.||

7.

If any man or woman shall lie with any beast or brute creature by carnal copulation, they shall surely be put to death. And the beast shall be slain and buried, and not eaten.¶

8.

If any man lieth with mankind as he lieth with a woman, both of them have committed abomination; they both shall surely be put to death.**

9.

If any person committeth adultery with a married or espoused wife, the adulterer and adulteress shall surely be put to death.††

10.

If any man stealeth a man or mankind, he shall surely be put to death.‡‡

* Ex. xxii. 18. Lev. xx. 27. Deut. xviii. 10.

|| Ex. xxi. 14.

† Lev. xxiv. 15, 16.

** Lev. xx. 13.

‡ Ex. xxi. 12. Numb. xxxv. 13, 14, 30, 31.

†† Ex. xxi. 16.

§ Numb. xxv. 20, 21. Lev. xxiv. 17.

¶ Lev. xx. 15, 16.

‡‡ Lev. xx. 19; xviii. 20. Deut. xxii. 23, 24.

11.

If any man rise up by false witness, wittingly and of purpose to take away any man's life, he shall be put to death.*

12.

If any man shall conspire and attempt any invasion, insurrection, or public rebellion against our Commonwealth, or shall endeavor to surprise any town or towns, fort or forts therein, or shall treacherously and perfidiously attempt the alteration and subversion of our frame of polity or government fundamentally, he shall be put to death.

95. *A Declaration of the Liberties the Lord Jesus hath given to the Churches.*

1.

All the people of God within this jurisdiction who are not in a church way, and be orthodox in judgment, and not scandalous in life, shall have full liberty to gather themselves into a church estate: Provided they do it in a Christian way, with due observation of the rules of Christ revealed in his word.

2.

Every church hath full liberty to exercise all the ordinances of God, according to the rules of Scripture.

3.

Every church hath free liberty of election and ordination of all their officers from time to time, provided they be able, pious, and orthodox.

4.

Every church hath free liberty of admission, recommendation, dismissal, and expulsion, or deposal of their officers and members, upon due cause, with free exercise of the discipline and censures of Christ, according to the rules of his word.

5.

No injunctions are to be put upon any church, church officers or member, in point of doctrine, worship, or discipline, whether for substance or circumstance, besides the institutions of the Lord.

6.

Every church of Christ hath freedom to celebrate days of fast-

* Deut. xix. 16, 18, 19.

ing and prayer, and of thanksgiving, according to the word of God.

7.

The elders of churches have free liberty to meet monthly, quarterly, or otherwise, in convenient numbers and places, for conferences and consultations about Christian and church questions and occasions.

8.

All churches have liberty to deal with any of their members in a church way that are in the hand of justice ; so it be not to retard or hinder the course thereof.

9.

Every church hath liberty to deal with any magistrate, deputy of court, or other officer whatsoever, that is a member, in a church way, in case of apparent and just offence given in their places, so it be done with due observance and respect.

10.

We allow private meetings for edification in religion amongst Christians of all sorts of people ; so it be without just offence for number, time, place, and other circumstances.

11.

For the preventing and removing of error and offence that may grow and spread in any of the churches in this jurisdiction, and for the preserving of truth and peace in the several churches within themselves, and for the maintenance and exercise of brotherly communion amongst all the churches in the country, it is allowed and ratified, by the authority of this General Court, as a lawful liberty of the churches of Christ : — That once in every month of the year (when the season will bear it), it shall be lawful for the ministers and elders of the churches near adjoining together, with any other of the brethren, with the consent of the churches, to assemble by course in each several church, one after another, to the intent, after the preaching of the word by such a minister as shall be requested thereto by the elders of the church where the assembly is held, that the rest of the day may be spent in public Christian conference, about the discussing and resolving of any such doubts and cases of conscience, concerning matter of doctrine or worship, or government of the church, as shall be propounded by any of the brethren of that church, with leave also to

any other brother to propound his objections or answers for further satisfaction, according to the word of God. Provided that the whole action be guided and moderated by the elders of the church where the assembly is held, or by such others as they shall appoint. And that nothing be concluded and imposed by way of authority from one or more churches upon another, but only by way of brotherly conference and consultation; that the truth may be searched out, to the satisfying of every man's conscience in the sight of God, according to his word. And because such an assembly and the work thereof cannot be duly attended to, if other lectures be held in the same week, it is therefore agreed, with the consent of the churches, that in that week when such an assembly is held, all the lectures in all the neighboring churches for that week shall be forborne; that so the public service of Christ in this more solemn assembly may be transacted with greater diligence and attention.

96. Howsoever these above specified rights, freedoms, immunities, authorities, and privileges, both civil and ecclesiastical, are expressed only under the name and title of Liberties, and not in the exact form of Laws or Statutes, yet we do with one consent fully authorize, and earnestly entreat, all that are and shall be in authority to consider them as laws, and not to fail to inflict condign and proportionable punishments upon every man impartially, that shall infringe or violate any of them.

97. We likewise give full power and liberty to any person that shall at any time be denied or deprived of any of them, to commence and prosecute their suit, complaint, or action against any man that shall so do, in any court that hath proper cognizance or judicature thereof.

98. Lastly, because our duty and desire is to do nothing suddenly which fundamentally concern us, we decree that these rights and liberties shall be audibly read and deliberately weighed at every General Court that shall be held, within three years next ensuing; and such of them as shall not be altered or repealed, they shall stand so ratified, that no man shall infringe them without due punishment.

And if any General Court, within these three next years, shall fail or forget to read and consider them as abovesaid, the Governor

and Deputy-Governor for the time being, and every Assistant present at such courts, shall forfeit twenty shillings a man, and every Deputy ten shillings a man, for each neglect, which shall be paid out of their proper estate, and not by the country or the towns which choose them. And whensoever there shall arise any question in any court, among the Assistants and Associates thereof, about the explanation of these rights and liberties, the General Court only shall have power to interpret them.

[THE enactment of the Body of Liberties was not the only important event which manifested the intention of the people of Massachusetts, and indeed of all New England, to build up both in church and state a polity of their own, and to manage their own affairs with as little interference as possible from the mother country. They had no conscious purpose of shaking off their dependence on England. Throughout the first century of their history, the Colonies were much too weak to stand alone; they needed countenance and aid in their exposed situation; and their feeling of attachment was strong to the land of their origin, which many of them had but recently left, and where nearly all had relatives and dear friends. But they aimed to make the tie which bound them as light, and the restraints which it imposed as few, as possible. The exact nature and limits of the dependence of the Colonies on the English crown and Parliament had never been clearly defined. The matter was in great part left to determine itself, the provisions in the charters being few and vague, and the ever-changing circumstances of the Colonists, arising from the influx of population, the rapid extension of the settlements, the frequent wars with the Indians and the French, and the opening of new avenues for the industry and enterprise of the people, constantly lessening the applicability of these provisions, and creating new emergencies and occasions, which had not been foreseen, and consequently not provided for, when these instruments were drawn up. The necessity of the case, growing out of the situation of the Colonists in a wilderness, at so great a distance from the parent country, obliged them to exert some powers which were never expressly granted to them, and to divert others to purposes that were never contemplated by the grantors. They were forced at times to exercise all the attributes of independent sovereignties, and to make war and peace with the native tribes, and even with the French, without consulting the authorities in England. When

the brand and the tomahawk were at their doors, they had no time to wait and inquire of the British ministry whether they were at liberty to go to war with the aggressors. The Pequod war and the war with King Philip were conducted by the Colonists alone, and were supported out of their own resources.

Apprehensions of a similar calamity and of the encroachments of the Dutch, and the desire of taking the most effective measures against them, led to what was certainly a daring usurpation of sovereign power, the Union or Confederacy of four Colonies of New England, which was created in 1643. This step was wholly unauthorized; it was not preceded by any consultation with the administrators of English affairs, and there was no provision in either of the charters empowering the people to establish such a Confederacy. The Colonists were reproached, at the time, with arrogating to themselves the rights of sovereignty in this transaction; but Hutchinson says that "the Confederacy was acknowledged and countenanced by the authority in England, from its beginning until the Restoration; and in letters from King Charles II., notice is taken of it without any exception to the establishment." This temporary league for limited purposes may be said to have prepared the way for the far more extensive and perfect union which was created nearly a century and a half afterwards. It subsisted, with some alterations, for about forty years, not being dissolved till 1686, when the charters of the New England Colonies were in effect vacated under the arbitrary rule of James II. Rhode Island asked to be allowed to join the Confederacy, but the application was refused, on the pretext that the people of Plymouth claimed the territory of Rhode Island as within the limits of their patent. But theological jealousy was probably the real ground of her exclusion. The Articles of Confederation are here reprinted from Winthrop's copy of them, as they appear in the excellent edition of Winthrop's Journal prepared by Mr. Savage.]

ARTICLES OF CONFEDERATION

OF THE

UNITED COLONIES OF NEW ENGLAND,

ESTABLISHED MAY 19TH, A. D. 1643.

THE Articles of Confederation between the plantations under the government of the Massachusetts, the plantations under the government of New Plymouth, the plantations under the government of Connecticut, and the government of New Haven, with the plantations in combination therewith :

WHEREAS we all came into these parts of America with one and the same end and aim, namely, to advance the kingdom of our Lord Jesus Christ, and to enjoy the liberties of the Gospel in purity with peace : and whereas by our settling, by the wise providence of God, we are further dispersed upon the sea-coasts and rivers than was at first intended, so that we cannot, according to our desire, with convenience communicate in one government and jurisdiction : and whereas we live encompassed with people of several nations and strange languages, which hereafter may prove injurious to us or our posterity ; and forasmuch as the natives have formerly committed sundry insolences and outrages upon several plantations of the English, and have of late combined themselves against us, and seeing by reason of the sad distractions in England (which they have heard of), and by which they know we are hindered both from that humble way of seeking advice, and reaping those comfortable fruits of protection, which at other times we might well expect ; we therefore do conceive it our bounden duty, without delay, to enter into a present consociation amongst ourselves for mutual help and strength in all future concernment, that, as in nation and religion, so in other respects, we be and continue one, according to the tenor and true meaning of the ensuing articles : —

1. Wherefore it is fully agreed and concluded between the par-

ties above named, and they jointly and severally do, by these presents, agree and conclude, that they all be, and henceforth be called by the name of, the United Colonies of New England.

2. These united Colonies, for themselves and their posterities, do jointly and severally hereby enter into a firm and perpetual league of friendship and amity, for offence and defence, mutual advice and succor upon all just occasions, both for preserving and propagating the truth and liberties of the Gospel, and for their own mutual safety and welfare.

3. It is further agreed, that the plantations which at present are, or hereafter shall be, settled within the limits of the Massachusetts, shall be for ever under the government of the Massachusetts, and shall have peculiar jurisdiction amongst themselves in all cases as an entire body; and that Plymouth, Connecticut, and New Haven shall each of them in all respects have like peculiar jurisdiction and government within their limits, and in reference to the plantations which are already settled, or shall hereafter be erected, and shall settle within any of their limits respectively: provided that no other jurisdiction shall hereafter be taken in as a distinct head or member of this confederation, nor shall any other, either plantation or jurisdiction in present being, and not already in combination or under the jurisdiction of any of these confederates, be received by any of them; nor shall any two of these confederates join in one jurisdiction, without consent of the rest, which consent to be interpreted as in the 6th ensuing article is expressed.

4. It is also by these confederates agreed, that the charge of all just wars, whether offensive or defensive, upon what part or member of this confederation soever they shall fall, shall, both in men and provisions and all other disbursements, be borne by all the parts of this confederation in different proportions, according to their different abilities, in manner following, viz.: That the commissioners for each jurisdiction, from time to time as there shall be occasion, bring account and number of all the males in each plantation, or any way belonging to or under their several jurisdictions, of what quality or condition soever they be, from sixteen years old to sixty, being inhabitants there, and that according to the different numbers which from time to time shall be found in each jurisdiction upon a true and just account, the service of men and all charges of the war be borne by the poll; each jurisdiction

or plantation being left to their own just course or custom of rating themselves and people according to their different estates, with due respect to their qualities and exemptions among themselves, though the confederation take no notice of any such privilege ; and that, according to the different charge of each jurisdiction and plantation, the whole advantage of the war, (if it please God so to bless their endeavors,) whether it be in lands, goods, or persons, shall be proportionably divided among the said confederates.

5. It is further agreed, that if any of these jurisdictions, or any plantation under or in combination with them, be invaded by any enemy whatsoever, upon notice and request of any three magistrates of that jurisdiction so invaded, the rest of the confederates, without any further notice or expostulation, shall forthwith send aid to the confederate in danger, but in different proportions ; namely, the Massachusetts, one hundred men sufficiently armed and provided for such a service and journey, and each of the rest, forty-five men so armed and provided ; or any less number, if less be required, according to this proportion. But if such a confederate in danger may be supplied by their next confederate, not exceeding the number hereby agreed, they may crave help thence, and seek no further for the present ; the charge to be borne as in this article is expressed, and at their return to be victualled, and supplied with powder and shot, if there be need, for their journey, by that jurisdiction which employed or sent for them ; but none of the jurisdictions to exceed these numbers till, by a meeting of the commissioners for this confederation, a greater aid appear necessary ; and this proportion to continue till, upon knowledge of the numbers in each jurisdiction, which shall be brought to the next meeting, some other proportion be ordered. But in any such case of sending men for present aid, whether before or after such order or alteration, it is agreed that, at the meeting of the commissioners for this confederation, the cause of such war or invasion be duly considered ; and if it appear that the fault lay in the party invaded, that then that jurisdiction or plantation make just satisfaction both to the invaders whom they have injured, and bear all the charge of the war themselves, without requiring any allowance from the rest of the confederates towards the same. And further, that if any jurisdiction see any danger of an invasion approaching, and there be time for a meeting, that in such case three magistrates of

that jurisdiction may summon a meeting at such convenient place as themselves shall think meet, to consider and provide against the threatened danger ; provided, when they are met, they may remove to what place they please : only while any of these four confederates have but three magistrates in their jurisdiction, a request or summons from any two of them shall be accounted of equal force with the three mentioned in both the clauses of this article, till there may be an increase of magistrates there.

6. It is also agreed, that for the managing and concluding of all affairs peculiar to and concerning the whole confederation, commissioners shall be chosen by and out of each of these four jurisdictions, viz. two for the Massachusetts, two for Plymouth, two for Connecticut, and two for New Haven, all in church fellowship with us, which shall bring full power from their several General Courts respectively, to hear, examine, weigh, and determine all affairs of war or peace, leagues, aids, charges, and numbers of men for war, division of spoils, or whatever is gotten by conquest ; receiving of more confederates or plantations into the combination with any of these confederates, and all things of like nature which are the proper concomitants or consequents of such a confederation for amity, offence, and defence, not intermeddling with the government of any of the jurisdictions, which by the 3d article is preserved entirely to themselves. But if those eight commissioners, when they meet, shall not agree, yet it is concluded that any six of the eight, agreeing, shall have power to settle and determine the business in question ; but if six do not agree, that then such propositions, with their reasons, so far as they have been debated, be sent and referred to the four General Courts, viz. the Massachusetts, Plymouth, Connecticut, and New Haven : and if at all the said General Courts the business so referred be concluded, then to be prosecuted by the confederation and all their members. It is further agreed, that these eight commissioners shall meet once every year (besides extraordinary meetings according to the 5th article), to consider, treat, and conclude of all affairs belonging to this confederation, which meeting shall ever be the first Thursday in September, and that the next meeting after the date of these presents (which shall be accounted the second meeting), shall be at Boston in the Massachusetts, the third at Hartford, the fourth at New Haven, the fifth at Plymouth, the sixth and seventh at Bos-

ton, and so in course successively, if in the mean time some middle place be not found out and agreed upon, which may be commodious for all the jurisdictions.

7. It is further agreed, that at each meeting of these eight commissioners, whether ordinary or extraordinary, they all, or any six of them agreeing as before, may choose their president out of themselves, whose office and work shall be to take care and direct for order and a comely carrying on of all proceedings in their present meeting; but he shall be invested with no such power or respect, as by which he shall hinder the propounding or progress of any business, or any way cast the scales otherwise than in the preceding articles is agreed.

8. It is also agreed, that the commissioners for this confederation hereafter at their meetings, whether ordinary or extraordinary, as they may have commission or opportunity, do endeavor to frame and establish agreements and orders in general cases of a civil nature wherein all the plantations are interested for preserving peace amongst themselves, and preventing, as much as may be, all occasions of war or differences with others, as about free and speedy passage of justice in each jurisdiction to all the confederates equally, as to their own, receiving those that remove from one plantation to another without due certificates, how all the jurisdictions may carry it towards the Indians, that they neither grow insolent nor be injured without due satisfaction, lest war break in upon the confederates through miscarriages. It is also agreed, that if any servant run away from his master into any of these confederate jurisdictions, that in such case, upon certificate of one magistrate in the jurisdiction out of which the said servant fled, or upon other due proof, the said servant shall be delivered either to his master or any other that pursues and brings such certificate or proof: and that upon the escape of any prisoner or fugitive for any criminal cause, whether breaking prison or getting from the officer, or otherwise escaping, upon the certificate of two magistrates of the jurisdiction out of which the escape is made, that he was a prisoner or such an offender at the time of the escape, the magistrate, or some of them of the jurisdiction where for the present the said prisoner or fugitive abideth, shall forthwith grant such a warrant as the case will bear, for the apprehending of any such person and the delivery of him into the hand of the officer or

other person who pursueth him ; and if there be help required for the safe returning of any such offender, then it shall be granted unto him that craves the same, he paying the charges thereof.

9. And for that the justest wars may be of dangerous consequence, especially to the smaller plantations in these United Colonies, it is agreed, that neither the Massachusetts, Plymouth, Connecticut, nor New Haven, nor any of the members of any of them, shall at any time hereafter begin, undertake, or engage themselves or this confederation, or any part thereof, in any war whatsoever, (sudden exigencies with the necessary consequences thereof excepted, which are also to be moderated as much as the case will permit,) without the consent and agreement of the aforementioned eight commissioners, or at least six of them, as in the 6th article is provided ; and that no charge be required of any of the confederates, in case of a defensive war, till the said commissioners have met and approved the justice of the war, and have agreed upon the sum of money to be levied, which sum is then to be paid by the several confederates in proportion according to the 4th article.

10. That in extraordinary occasions, when meetings are summoned by three magistrates of any jurisdiction, or two, as in the 5th article, if any of the commissioners come not, due warning being given or sent, it is agreed that four of the commissioners shall have power to direct a war which cannot be delayed, and to send for due proportions of men out of each jurisdiction, as well as six might do if all met ; but not less than six shall determine the justice of the war, or allow the demands or bills of charges, or cause any levies to be made for the same.

11. It is further agreed, that if any of the confederates shall hereafter break any of these present articles, or be otherway injurious to any one of the other jurisdictions, such breach of agreement or injury shall be duly considered and ordered by the commissioners for the other jurisdictions, that both peace and this present confederation may be entirely preserved without violation.

12. Lastly, this perpetual confederation, and the several articles and agreements thereof being read and seriously considered both by the General Court for the Massachusetts and the commissioners for the other three, were subscribed presently by the commissioners, all save those of Plymouth, who, for want of sufficient com-

mission from their General Court, deferred their subscription till the next meeting, and then they subscribed also, and were to be allowed by the General Courts of the several jurisdictions, which accordingly was done, and certified at the next meeting held at Boston, September 7, 1643.

Boston, May 19, 1643.

[AFTER the Confederacy of the United Colonies of New England ceased to exist, plans were proposed at different times for forming a more comprehensive union of all the British Colonies in North America, the chief object in view being concert and unanimity of action against the Indians and the French. One such plan was considered by the Board of Trade in 1696 ; but the peace of Ryswick caused it to be laid aside and forgotten. Another and more remarkable one was drawn up by Dr. Franklin, and accepted by a convention of delegates from several of the Colonies, held at Albany in 1754. Seven of the Colonies, namely, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, and Maryland, were represented in this convention by twenty-five delegates, Dr. Franklin being one of the members from Pennsylvania. The Board of Trade had called them together, as a French war was impending, in order to secure the friendship of the Six Nations, and concert measures against the other Indian tribes and their white allies. But Massachusetts had authorized her commissioners to " enter into articles of union and confederation for the general defence of his Majesty's subjects and interests in North America, as well in time of peace as of war." Under this encouragement, while the business with the Indians was pending, Dr. Franklin brought forward the plan of union, which he had sketched in outline some time before, and shown to some of his friends in New York, who had revised and approved it. Some other plans were presented, but Franklin's was preferred ; and after it had been debated in the Convention for twelve days, it was adopted, either unanimously, or with the solitary dissent of Connecticut.

But the Plan of Union met with little favor out of the Convention, being rejected by all the Colonial Assemblies before which it was brought, and the Board of Trade declining even to recommend it to the notice of the king. Franklin says, " The Assemblies all thought there was too much *prerogative* in it, and in England it was thought to have too much of the *democratic*." The discussion of it undoubtedly prepared the minds of the Americans for their union in the Revolutionary struggle, for the Confederation which was planned in 1778 and went into effect in 1781, and finally for the adoption of the Federal Constitution in 1788. It is here printed as it appears in Mr. Sparks's edition of Franklin's writings, the several *Articles* of Union being in Italic type, and the reasons and motives for them in Roman. The Union was to comprehend all the British Colonies then existing in North America, except Georgia and Nova Scotia.]

PLAN OF UNION

OF THE

BRITISH AMERICAN COLONIES,

ADOPTED BY THE CONVENTION AT ALBANY IN 1754, WITH THE REASONS
AND MOTIVES FOR EACH ARTICLE OF THE PLAN.

It is proposed, that humble application be made for an act of Parliament of Great Britain, by virtue of which one general government may be formed in America, including all the said Colonies, within and under which government each Colony may retain its present constitution, except in the particulars wherein a change may be directed by the said act, as hereafter follows.

PRESIDENT-GENERAL AND GRAND COUNCIL.

That the said general government be administered by a President-General, to be appointed and supported by the crown ; and a Grand Council, to be chosen by the representatives of the people of the several Colonies met in their respective assemblies.

It was thought that it would be best the President-General should be supported as well as appointed by the crown, that so all disputes between him and the Grand Council concerning his salary might be prevented ; as such disputes have been frequently of mischievous consequence in particular Colonies, especially in time of public danger. The quitrents of crown lands in America might in a short time be sufficient for this purpose. The choice of members for the Grand Council is placed in the House of Representatives of each government, in order to give the people a share in this new general government, as the crown has its share by the appointment of the President-General.

But it being proposed by the gentlemen of the Council of New York, and some other counsellors among the commissioners, to alter the plan in this particular, and to give the governors and councils of the several Provinces a share in the choice of the Grand

Council, or at least a power of approving and confirming, or of disallowing, the choice made by the House of Representatives, it was said, —

“ That the government or constitution, proposed to be formed by the plan, consists of two branches ; a President-General appointed by the crown, and a Council chosen by the people, or by the people's representatives, which is the same thing.

“ That, by a subsequent article, the Council chosen by the people can effect nothing without the consent of the President-General appointed by the crown ; the crown possesses, therefore, full one half of the power of this constitution.

“ That in the British constitution, the crown is supposed to possess but one third, the Lords having their share.

“ That this constitution seemed rather more favorable for the crown.

“ That it is essential to English liberty, that the subject should not be taxed but by his own consent, or the consent of his elected representatives.

“ That taxes to be laid and levied by this proposed constitution will be proposed and agreed to by the representatives of the people, if the plan in this particular be preserved ;

“ But if the proposed alteration should take place, it seemed as if matters may be so managed, as that the crown shall finally have the appointment, not only of the President-General, but of a majority of the Grand Council ; for seven out of eleven governors and councils are appointed by the crown ;

“ And so the people in all the Colonies would in effect be taxed by their governors.

“ It was therefore apprehended, that such alterations of the plan would give great dissatisfaction, and that the Colonies could not be easy under such a power in governors, and such an infringement of what they take to be English liberty.

“ Besides, the giving a share in the choice of the Grand Council would not be equal with respect to all the Colonies, as their constitutions differ. In some, both governor and council are appointed by the crown. In others, they are both appointed by the proprietors. In some, the people have a share in the choice of the council ; in others, both government and council are wholly chosen by the people. But the House of Representatives is everywhere chosen

by the people ; and, therefore, placing the right of choosing the Grand Council in the representatives is equal with respect to all.

“ That the Grand Council is intended to represent all the several Houses of Representatives of the Colonies, as a House of Representatives doth the several towns or counties of a Colony. Could all the people of a Colony be consulted and unite in public measures, a House of Representatives would be needless, and could all the Assemblies conveniently consult and unite in general measures, the Grand Council would be unnecessary.

“ That a House of Commons or the House of Representatives, and the Grand Council, are thus alike in their nature and intention. And, as it would seem improper that the King or House of Lords should have a power of disallowing or appointing members of the House of Commons ; so, likewise, that a governor and council appointed by the crown should have a power of disallowing or appointing members of the Grand Council, who, in this constitution, are to be the representatives of the people.

“ If the governors and councils therefore were to have a share in the choice of any that are to conduct this general government, it should seem more proper that they choose the President-General. But, this being an office of great trust and importance to the nation, it was thought better to be filled by the immediate appointment of the crown.

“ The power proposed to be given by the plan to the Grand Council is only a concentration of the powers of the several Assemblies in certain points for the general welfare ; as the power of the President-General is of the several governors in the same points.

“ And as the choice therefore of the Grand Council, by the representatives of the people, neither gives the people any new powers, nor diminishes the power of the crown, it was thought and hoped the crown would not disapprove of it.”

Upon the whole, the commissioners were of opinion, that the choice was most properly placed in the representatives of the people.

ELECTION OF MEMBERS.

That within months after the passing such act, the House of Representatives that happen to be sitting within that time, or

that shall be especially for that purpose convened, may and shall choose members for the Grand Council, in the following proportion, that is to say,

<i>Massachusetts Bay,</i>	.	.	.	.	7
<i>New Hampshire,</i>	.	.	.	.	2
<i>Connecticut,</i>	.	.	.	.	5
<i>Rhode Island,</i>	.	.	.	.	2
<i>New York,</i>	.	.	.	.	4
<i>New Jersey,</i>	.	.	.	.	3
<i>Pennsylvania,</i>	.	.	.	.	6
<i>Maryland,</i>	.	.	.	.	4
<i>Virginia,</i>	.	.	.	.	7
<i>North Carolina,</i>	.	.	.	.	4
<i>South Carolina,</i>	.	.	.	.	4
					<hr/>
					48

It was thought, that if the least Colony was allowed two, and the others in proportion, the number would be very great, and the expense heavy; and that less than two would not be convenient, as, a single person being by any accident prevented appearing at the meeting, the Colony he ought to appear for would not be represented. That, as the choice was not immediately popular, they would be generally men of good abilities for business, and men of reputation for integrity; and that forty-eight such men might be a number sufficient. But, though it was thought reasonable that each Colony should have a share in the representative body in some degree according to the proportion it contributed to the general treasury, yet the proportion of wealth or power of the Colonies is not to be judged by the proportion here fixed; because it was at first agreed, that the greatest Colony should not have more than seven members, nor the least less than two; and the setting these proportions between these two extremes was not nicely attended to, as it would find itself, after the first election, from the sums brought into the treasury, as by a subsequent article.

PLACE OF FIRST MEETING.

— who shall meet for the first time at the city of Philadelphia in Pennsylvania, being called by the President-General as soon as conveniently may be after his appointment.

Philadelphia was named as being nearer the centre of the Colonies, where the commissioners would be well and cheaply accommodated. The high roads, through the whole extent, are for the most part very good, in which forty or fifty miles a day may very well be, and frequently are, travelled. Great part of the way may likewise be gone by water. In summer time, the passages are frequently performed in a week from Charleston to Philadelphia and New York; and from Rhode Island to New York through the Sound, in two or three days; and from New York to Philadelphia, by water and land, in two days, by stage, boats, and wheel-carriages that set out every other day. The journey from Charleston to Philadelphia may likewise be facilitated by boats running up Chesapeake Bay three hundred miles. But if the whole journey be performed on horseback, the most distant members, viz. the two from New Hampshire and from South Carolina, may probably render themselves at Philadelphia in fifteen or twenty days; the majority may be there in much less time.

NEW ELECTION.

That there shall be a new election of the members of the Grand Council every three years; and, on the death or resignation of any member, his place should be supplied by a new choice at the next sitting of the Assembly of the Colony he represented.

Some Colonies have annual assemblies, some continue during a governor's pleasure; three years was thought a reasonable medium, as affording a new member time to improve himself in the business, and to act after such improvement, and yet giving opportunities, frequently enough, to change him, if he has misbehaved.

PROPORTION OF MEMBERS AFTER THE FIRST THREE YEARS.

That after the first three years, when the proportion of money arising out of each Colony to the general treasury can be known, the number of members to be chosen for each Colony shall, from time to time, in all ensuing elections, be regulated by that proportion, yet so as that the number to be chosen by any one Province be not more than seven, nor less than two.

By a subsequent article, it is proposed that the General Council shall lay and levy such general duties as to them may appear

most equal and least burdensome, &c. Suppose, for instance, they lay a small duty or excise on some commodity imported into or made in the Colonies, and pretty generally and equally used in all of them, as rum perhaps, or wine ; the yearly produce of this duty or excise, if fairly collected, would be in some Colonies greater, in others less, as the Colonies are greater or smaller. When the collector's accounts are brought in, the proportions will appear ; and from them it is proposed to regulate the proportion of representatives to be chosen at the next general election, within the limits however of seven and two. These numbers may therefore vary in the course of years, as the Colonies may in the growth and increase of people. And thus the quota of tax from each Colony would naturally vary with its circumstances, thereby preventing all disputes and dissatisfaction about the just proportions due from each ; which might otherwise produce pernicious consequences, and destroy the harmony and good agreement that ought to subsist between the several parts of the Union.

MEETINGS OF THE GRAND COUNCIL, AND CALL.

That the Grand Council shall meet once in every year, and oftener if occasion require, at such time and place as they shall adjourn to at the last preceding meeting, or as they shall be called to meet at by the President-General on any emergency ; he having first obtained in writing the consent of seven of the members to such call, and sent due and timely notice to the whole.

It was thought, in establishing and governing new colonies or settlements, regulating Indian trade, Indian treaties, &c., there would every year sufficient business arise to require at least one meeting, and at such meeting many things might be suggested for the benefit of all the Colonies. This annual meeting may either be at a time or place certain, to be fixed by the President-General and Grand Council at their first meeting ; or left at liberty, to be at such time and place as they shall adjourn to, or be called to meet at by the President-General.

In time of war, it seems convenient that the meeting should be in that Colony which is nearest the seat of action.

The power of calling them on any emergency seemed necessary to be vested in the President-General ; but, that such power might not be wantonly used to harass the members, and oblige

them to make frequent long journeys to little purpose, the consent of seven at least to such call was supposed a convenient guard.

CONTINUANCE.

That the Grand Council have power to choose their speaker; and shall neither be dissolved, prorogued, nor continued sitting longer than six weeks at one time, without their own consent or the special command of the crown.

The speaker should be presented for approbation; it being convenient, to prevent misunderstandings and disgests, that the mouth of the Council should be a person agreeable, if possible, both to the Council and President-General.

Governors have sometimes wantonly exercised the power of proroguing or continuing the sessions of Assemblies, merely to harass the members and compel a compliance; and sometimes dissolve them on slight disgests. This it was feared might be done by the President-General, if not provided against; and the inconvenience and hardship would be greater in the general government than in particular Colonies, in proportion to the distance the members must be from home during sittings, and the long journeys some of them must necessarily take.

MEMBERS' ALLOWANCE.

That the members of the Grand Council shall be allowed for their service ten shillings sterling per diem, during their session and journey to and from the place of meeting; twenty miles to be reckoned a day's journey.

It was thought proper to allow *some* wages, lest the expense might deter some suitable persons from the service; and not to allow *too great* wages, lest unsuitable persons should be tempted to cabal for the employment, for the sake of gain. Twenty miles were set down as a day's journey, to allow for accidental hinderances on the road, and the greater expenses of travelling than residing at the place of meeting.

ASSENT OF PRESIDENT-GENERAL AND HIS DUTY.

That the assent of the President-General be requisite to all acts of the Grand Council, and that it be his office and duty to cause them to be carried into execution.

The assent of the President-General to all acts of the Grand Council was made necessary, in order to give the crown its due share of influence in this government, and connect it with that of Great Britain. The President-General, besides one half of the legislative power, hath in his hands the whole executive power.

POWER OF PRESIDENT-GENERAL AND GRAND COUNCIL ; TREATIES OF PEACE AND WAR.

That the President-General, with the advice of the Grand Council, hold or direct all Indian treaties, in which the general interest of the Colonies may be concerned ; and make peace or declare war with Indian nations.

The power of making peace or war with Indian nations is at present supposed to be in every Colony, and is expressly granted to some by charter, so that no new power is hereby intended to be granted to the Colonies. But as, in consequence of this power, one Colony might make peace with a nation that another was justly engaged in war with ; or make war on slight occasions without the concurrence or approbation of neighboring Colonies, greatly endangered by it ; or make particular treaties of neutrality in case of a general war, to their own private advantage in trade, by supplying the common enemy ; of all which there have been instances ; it was thought better to have all treaties of a general nature under a general direction, that so the good of the whole may be consulted and provided for.

INDIAN TRADE.

That they make such laws as they judge necessary for regulating all Indian trade.

Many quarrels and wars have arisen between the Colonies and Indian nations, through the bad conduct of traders who cheat the Indians after making them drunk, &c., to the great expense of the Colonies, both in blood and treasure. Particular Colonies are so interested in the trade, as not to be willing to admit such a regulation as might be best for the whole ; and therefore it was thought best under a general direction.

INDIAN PURCHASES.

That they make all purchases from Indians, for the crown, of

lands not now within the bounds of particular Colonies, or that shall not be within their bounds when some of them are reduced to more convenient dimensions.

Purchases from the Indians, made by private persons, have been attended with many inconveniences. They have frequently interfered, and occasioned uncertainty of titles, many disputes and expensive lawsuits, and hindered the settlement of the land so disputed. Then the Indians have been cheated by such private purchases, and discontent and wars have been the consequence. These would be prevented by public fair purchases.

Several of the Colony charters in America extend their bounds to the South Sea, which may be perhaps three or four thousand miles in length to one or two hundred miles in breadth. It is supposed they must in time be reduced to dimensions more convenient for the common purposes of government.

Very little of the land in those grants is yet purchased of the Indians.

It is much cheaper to purchase of them, than to take and maintain the possession by force; for they are generally very reasonable in their demands for land; and the expense of guarding a large frontier against their incursions is vastly great; because all must be guarded, and always guarded, as we know not where or when to expect them.

NEW SETTLEMENTS.

That they make new settlements on such purchases, by granting lands in the King's name, reserving a quitrent to the crown for the use of the general treasury.

It is supposed better that there should be one purchaser than many; and that the crown should be that purchaser, or the Union in the name of the crown. By this means the bargains may be more easily made, the price not enhanced by numerous bidders, future disputes about private Indian purchases, and monopolies of vast tracts to particular persons (which are prejudicial to the settlement and peopling of the country), prevented; and, the land being again granted in small tracts to the settlers, the quitrents reserved may in time become a fund for support of government, for defence of the country, ease of taxes, &c.

Strong forts on the Lakes, the Ohio, &c., may, at the same time

they secure our present frontiers, serve to defend new colonies settled under their protection ; and such colonies would also mutually defend and support such forts, and better secure the friendship of the far Indians.

A particular Colony has scarce strength enough to extend itself by new settlements, at so great a distance from the old ; but the joint force of the Union might suddenly establish a new Colony or two in those parts, or extend an old Colony to particular passes, greatly to the security of our present frontiers, increase of trade and people, breaking off the French communication between Canada and Louisiana, and speedy settlement of the intermediate lands.

The power of settling new colonies is therefore thought a valuable part of the plan, and what cannot so well be executed by two unions as by one.

LAWS TO GOVERN THEM.

That they make laws for regulating and governing such new settlements, till the crown shall think fit to form them into particular governments.

The making of laws suitable for the new colonies, it was thought, would be properly vested in the President-General and Grand Council ; under whose protection they must at first necessarily be, and who would be well acquainted with their circumstances, as having settled them. When they are become sufficiently populous, they may by the crown be formed into complete and distinct governments.

The appointment of a sub-president by the crown, to take place in case of the death or absence of the President-General, would perhaps be an improvement of the plan ; and if all the governors of particular provinces were to be formed into a standing council of state, for the advice and assistance of the President-General, it might be another considerable improvement.

RAISE SOLDIERS, AND EQUIP VESSELS, &c.

That they raise and pay soldiers and build forts for the defence of any of the Colonies, and equip vessels of force to guard the coasts and protect the trade on the ocean, lakes, or great rivers ; but they shall not impress men in any Colony, without the consent of the legislature.

It was thought, that quotas of men, to be raised and paid by the several Colonies, and joined for any public service, could not always be got together with the necessary expedition. For instance, suppose one thousand men should be wanted in New Hampshire on any emergency. To fetch them by fifties and hundreds out of every Colony, as far as South Carolina, would be inconvenient, the transportation chargeable, and the occasion perhaps passed before they could be assembled; and therefore it would be best to raise them (by offering bounty-money and pay) near the place where they would be wanted, to be discharged again when the service should be over.

Particular Colonies are at present backward to build forts at their own expense, which they say will be equally useful to their neighboring Colonies; who refuse to join, on a presumption that such forts *will* be built and kept up, though they contribute nothing. This unjust conduct weakens the whole; but the forts being for the good of the whole, it was thought best they should be built and maintained by the whole, out of the common treasury.

In the time of war, small vessels of force are sometimes necessary in the Colonies to scour the coasts of small privateers. These being provided by the Union will be an advantage in turn to the Colonies which are situated on the sea, and whose frontiers on the land-side, being covered by other Colonies, reap but little immediate benefit from the advanced forts.

POWER TO MAKE LAWS, LAY DUTIES, &c.

That for these purposes they have power to make laws, and lay and levy such general duties, imposts, or taxes, as to them shall appear most equal and just (considering the ability and other circumstances of the inhabitants in the several Colonies), and such as may be collected with the least inconvenience to the people; rather discouraging luxury, than loading industry with unnecessary burdens.

The laws which the President-General and Grand Council are empowered to make *are such only* as shall be necessary for the government of the settlements; the raising, regulating, and paying soldiers for the general service; the regulating of Indian trade; and laying and collecting the general duties and taxes. They should also have a power to restrain the exportation of provisions

to the enemy from any of the Colonies, on particular occasions, in time of war. But it is not intended that they may interfere with the constitution and government of the particular Colonies; who are to be left to their own laws, and to lay, levy, and apply their own taxes, as before.

GENERAL TREASURER AND PARTICULAR TREASURER.

That they may appoint a General Treasurer, and Particular Treasurer in each government when necessary; and, from time to time, may order the sums in the treasuries of each government into the general treasury; or draw on them for special payments, as they find most convenient.

The treasurers here meant are only for the general funds, and not for the particular funds of each Colony, which remain in the hands of their own treasurers, at their own disposal.

MONEY, HOW TO ISSUE.

Yet no money to issue but by joint orders of the President-General and Grand Council; except where sums have been appropriated to particular purposes, and the President-General is previously empowered by an act to draw such sums.

To prevent misapplication of the money, or even application that might be dissatisfactory to the crown or the people, it was thought necessary to join the President-General and Grand Council in all issues of money.

ACCOUNTS.

That the general accounts shall be yearly settled and reported to the several Assemblies.

By communicating the accounts yearly to each Assembly, they will be satisfied of the prudent and honest conduct of their representatives in the Grand Council.

QUORUM.

That a quorum of the Grand Council, empowered to act with the President-General, do consist of twenty-five members; among whom there shall be one or more from a majority of the Colonies.

The quorum seems large, but it was thought it would not be satisfactory to the Colonies in general to have matters of impor-

tance to the whole transacted by a smaller number, or even by this number of twenty-five, unless there were among them one at least from a majority of the Colonies; because, otherwise, the whole quorum being made up of members from three or four Colonies at one end of the Union, something might be done that would not be equal with respect to the rest, and thence dissatisfaction and discords might rise to the prejudice of the whole.

LAWS TO BE TRANSMITTED.

That the laws made by them for the purposes aforesaid shall not be repugnant, but, as near as may be, agreeable to the laws of England, and shall be transmitted to the King in Council for approbation, as soon as may be after their passing; and if not disapproved within three years after presentation, to remain in force.

This was thought necessary for the satisfaction of the crown, to preserve the connection of the parts of the British empire with the whole, of the members with the head, and to induce greater care and circumspection in making of the laws, that they be good in themselves and for the general benefit.

DEATH OF THE PRESIDENT-GENERAL.

That, in case of the death of the President-General, the Speaker of the Grand Council for the time being shall succeed, and be vested with the same powers and authorities, to continue till the King's pleasure be known.

It might be better, perhaps, as was said before, if the crown appointed a Vice-President, to take place on the death or absence of the President-General; for so we should be more sure of a suitable person at the head of the Colonies. On the death or absence of both, the Speaker to take place (or rather the eldest King's governor) till his Majesty's pleasure be known.

OFFICERS, HOW APPOINTED.

That all military commission officers, whether for land or sea service, to act under this general constitution, shall be nominated by the President-General; but the approbation of the Grand Council is to be obtained, before they receive their commissions. And all civil officers are to be nominated by the Grand Council, and to receive the President-General's approbation before they officiate.

It was thought it might be very prejudicial to the service, to have officers appointed unknown to the people, or unacceptable, the generality of Americans serving willingly under officers they know ; and not caring to engage in the service under strangers, or such as are often appointed by governors through favor or interest. The service here meant is not the stated, settled service in standing troops ; but any sudden and short service, either for defence of our Colonies, or invading the enemy's country (such as the expedition to Cape Breton in the last war ; in which many substantial farmers and tradesmen engaged as common soldiers, under officers of their own country, for whom they had an esteem and affection ; who would not have engaged in a standing army, or under officers from England). It was therefore thought best to give the Council the power of approving the officers, which the people will look upon as a great security of their being good men. And without some such provision as this, it was thought the expense of engaging men in the service on any emergency would be much greater, and the number who could be induced to engage much less ; and that therefore it would be most for the King's service and general benefit of the nation, that the prerogative should relax a little in this particular throughout all the Colonies in America ; as it had already done much more in the charters of some particular Colonies, viz. Connecticut and Rhode Island.

The civil officers will be chiefly treasurers and collectors of taxes ; and the suitable persons are most likely to be known by the Council.

VACANCIES, HOW SUPPLIED.

But, in case of vacancy by death or removal of any officer, civil or military, under this constitution, the Governor of the Province in which such vacancy happens may appoint, till the pleasure of the President-General and Grand Council can be known.

The vacancies were thought best supplied by the governors in each Province, till a new appointment can be regularly made ; otherwise the service might suffer before the meeting of the President-General and Grand Council.

EACH COLONY MAY DEFEND ITSELF ON EMERGENCY, &c.

That the particular military as well as civil establishments in

each Colony remain in their present state, the general constitution notwithstanding; and that on sudden emergencies any Colony may defend itself, and lay the accounts of expense thence arising before the President-General and General Council, who may allow and order payment of the same, as far as they judge such accounts just and reasonable.

Otherwise the union of the whole would weaken the parts, contrary to the design of the union. The accounts are to be judged of by the President-General and Grand Council, and allowed if found reasonable. This was thought necessary to encourage Colonies to defend themselves, as the expense would be light when borne by the whole; and also to check imprudent and lavish expense in such defences.

DECLARATION OF INDEPENDENCE

OF THE

UNITED STATES OF AMERICA,

BY THEIR REPRESENTATIVES IN CONGRESS ASSEMBLED, JULY 4, 1776.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident:— that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these, are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former systems of

government. The history of the present king of Great Britain, is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature; a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction, foreign to our constitution, and unacknowledged by our laws ; giving his assent to their acts of pretended legislation ; —

For quartering large bodies of armed troops among us :

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States :

For cutting off our trade with all parts of the world :

For imposing taxes on us without our consent :

For depriving us, in many cases, of the benefits of trial by jury :

For transporting us beyond seas to be tried for pretended offences :

For abolishing the free system of English laws in a neighboring Province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies :

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments :

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms : our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the Representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these Colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, FREE and INDEPENDENT STATES ; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved ; and that, as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

JOHN HANCOCK, &c.

THE BILL OF RIGHTS

OF THE

CONSTITUTION OF VIRGINIA.

A DECLARATION OF RIGHTS MADE BY THE REPRESENTATIVES OF THE GOOD PEOPLE OF VIRGINIA, ASSEMBLED IN FULL AND FREE CONVENTION; WHICH RIGHTS DO PERTAIN TO THEM, AND THEIR POSTERITY, AS THE BASIS AND FOUNDATION OF GOVERNMENT.

UNANIMOUSLY ADOPTED, JUNE 12TH, 1776.

1. THAT all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

3. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community: of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

4. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consid-

eration of public services; which not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.

5. That the legislative and executive powers of the State should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part, of the former members, to be again eligible, or ineligible, as the laws shall direct.

6. That elections of members to serve as representatives of the people, in assembly, ought to be free; and that all men having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assented, for the public good.

7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

8. That, in all capital or criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty except by the law of the land or the judgment of his peers.

9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

10. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

11. That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.

12. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

13. That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free state ; that standing armies, in time of peace, should be avoided, as dangerous to liberty ; and that, in all cases, the military should be under strict subordination to, and governed by, the civil power.

14. That the people have a right to uniform government ; and therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.

15. That no free government, or the blessing of liberty, can be preserved to any people, by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence ; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience ; and that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other.

ARTICLES OF CONFEDERATION

AND

PERPETUAL UNION

BETWEEN THE STATES OF NEW HAMPSHIRE, MASSACHUSETTS BAY, RHODE ISLAND AND PROVIDENCE PLANTATIONS, CONNECTICUT, NEW YORK, NEW JERSEY, PENNSYLVANIA, DELAWARE, MARYLAND, VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA, AND GEORGIA.

ADOPTED IN CONGRESS, JULY 9, 1778; RATIFIED AND CARRIED INTO EFFECT, MARCH 1, 1781.

ARTICLE 1. The style of this confederacy shall be, "*The United States of America.*"

ART. 2. Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States in Congress assembled.

ART. 3. The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ART. 4. § 1. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, imposi-

tions, and restrictions as the inhabitants thereof respectively : provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State to any other State of which the owner is an inhabitant : provided also, that no imposition, duties, or restriction shall be laid by any State on the property of the United States, or either of them.

§ 2. If any person guilty of or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offence.

§ 3. Full faith and credit shall be given, in each of these States, to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ART. 5. § 1. For the more convenient management of the general interests of the United States, delegates shall be annually appointed, in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

§ 2. No State shall be represented in Congress by less than two, nor more than seven members ; and no person shall be capable of being a delegate for more than three years, in any term of six years ; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or any other for his benefit, receives any salary, fees, or emolument of any kind.

§ 3. Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of these States.

§ 4. In determining questions in the United States in Congress assembled, each State shall have one vote.

§ 5. Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

ART. 6. § 1. No State, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with, any king, prince, or state; nor shall any person, holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

§ 2. No two or more States shall enter into any treaty, confederation, or alliance whatever, between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

§ 3. No State shall lay any imposts or duties which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

§ 4. No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States in Congress assembled, for the defence of such State, or its trade: nor shall any body of forces be kept up, by any State, in time of peace, except such number only as, in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

§ 5. No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of delay till the United States in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of

war by the United States in Congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

ART. 7. When land forces are raised by any State for the common defence, all officers of or under the rank of colonel shall be appointed by the legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ART. 8. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in Congress assembled shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States, within the time agreed upon by the United States in Congress assembled.

ART. 9. § 1. The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth Article, of sending and receiving ambassadors ; entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever ; of establishing rules for deciding in all cases what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated ; of granting letters of marque

and reprisal in time of peace ; appointing courts for the trial of piracies and felonies committed on the high seas ; and establishing courts for receiving and determining finally appeals in all cases of captures ; provided that no member of Congress shall be appointed a judge of any of the said courts.

§ 2. The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise, between two or more States, concerning boundary, jurisdiction, or any other cause whatever ; which authority shall always be exercised in the manner following : Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question ; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen ; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot ; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination : and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or, being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing ; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive ; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and de-

cisive ; the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress, for the security of the parties concerned : provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, “ well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward.” Provided also, that no State shall be deprived of territory for the benefit of the United States.

§ 3. All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions, as they may respect such lands and the States which passed such grants, are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

§ 4. The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States ; fixing the standard of weights and measures throughout the United States ; regulating the trade and managing all affairs with the Indians, not members of any of the States ; provided that the legislative right of any State, within its own limits, be not infringed or violated ; establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office ; appointing all officers of the land forces in the service of the United States, excepting regimental officers ; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States ; making rules for the government and regulation of the said land and naval forces, and directing their operations.

§ 5. The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated, “ *A Committee of the States,*” and to consist of

one delegate from each State ; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction ; to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years ; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses ; to borrow money or emit bills on the credit of the United States, transmitting every half-year to the respective States an account of the sums of money so borrowed or emitted ; to build and equip a navy ; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State, which requisition shall be binding ; and thereupon the legislature of each State shall appoint the regimental officers, raise the men, clothe, arm, and equip them, in a soldier-like manner, at the expense of the United States ; and the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled ; but if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

§ 6. The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number

of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same : nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

§ 7. The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy ; and the yeas and nays of the delegates of each State, on any question, shall be entered on the journal, when it is desired by any delegate ; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

ART. 10. The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States, in Congress assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with ; provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States, in the Congress of the United States assembled, is requisite.

ART. 11. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of, this union : but no other Colony shall be admitted into the same, unless such admission be agreed to by nine States.

ART. 12. All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ART. 13. Every State shall abide by the determination of the United States in Congress assembled, in all questions which by

this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislature of every State.

And whereas it hath pleased the great Governor of the world to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said Articles of Confederation and Perpetual Union, Know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and Perpetual Union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determination of the United States in Congress assembled, in all questions which by the said Confederation are submitted to them; and that the articles thereof shall be inviolably observed by the States we respectively represent, and that the union shall be perpetual. In witness whereof, we have hereunto set our hands in Congress.

Done at Philadelphia, in the State of Pennsylvania, the 9th day of July, in the year of our Lord 1778, and in the third year of the Independence of America.

A

DECLARATION OF RIGHTS

OF THE INHABITANTS

OF THE COMMONWEALTH OF MASSACHUSETTS.

ADOPTED IN THE CONSTITUTION OF THAT STATE, MARCH 2, 1780.

ARTICLE 1. All men are born free and equal, and have certain natural, essential, and unalienable rights : among which may be reckoned the right of enjoying and defending their lives and liberties ; that of acquiring, possessing, and protecting property ; in fine, that of seeking and obtaining their safety and happiness.

2. It is the right, as well as the duty, of all men in society, publicly, and at stated seasons, to worship the Supreme Being, the Great Creator and Preserver of the Universe. And no subject shall be hurt, molested, or restrained in his person, liberty, or estate, for worshipping God in the manner and seasons most agreeable to the dictates of his own conscience ; or for his religious profession or sentiments ; provided he doth not disturb the public peace, or obstruct others in their religious worship.

3. As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion, and morality ; and as these cannot be generally diffused throughout the community, but by the institution of a public worship of God, and of public institutions in piety, religion, and morality ; therefore, to promote their happiness, and to secure the good order and preservation of their government, the people of this Commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of God, and for the support and maintenance of public Protestant teachers of piety, religion, and morality, in all cases where such provision shall not be made voluntarily.

All the people of the Commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers, as aforesaid, at stated times and seasons, if there be any one whose instructions they can conscientiously and conveniently attend : —

Provided, notwithstanding, that the several towns, parishes, precincts, and the other bodies politic, or religious societies, shall, at all times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

All moneys paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any, on whose instruction he attends ; otherwise, it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said moneys are raised.

And every denomination of Christians, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the law ; and no subordination of any sect or denomination to another shall ever be established by law.

4. The people of this Commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent state ; and do, and for ever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter be, by them expressly delegated to the United States of America in Congress assembled.

5. All power residing originally in the people, and being derived from them, the several magistrates and officers of government vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

6. No man, or corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public. And this title being, in nature, neither hereditary nor transmissible to children or descendants, or relations of blood, the idea of a man born a magistrate, lawgiver, or judge is absurd and unnatural.

7. Government is instituted for the common good ; for the protection, safety, prosperity, and happiness of the people ; and not for the profit, honor, or private interest of any one man, family, or any one class of men. Therefore, the people alone have an incontestable, unalienable, and indefeasible right to institute government, and to reform, alter, or totally change the same, when their protection, safety, prosperity, and happiness require it.

8. In order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by the frame of government, to cause their public officers to return to private life, and to fill up vacant places by certain and regular elections and appointments.

9. All elections ought to be free : and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected for public employments.

10. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to the standing laws. He is obliged, consequently, to contribute his share to the expense of this protection ; to give his personal service, or an equivalent, when necessary. But no part of the property of any individual can, with justice, be taken from him, or applied to the public use, without his own consent, or that of the representative body of the people. In fine, the people of this Commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

11. Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive, in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it, — completely, and without any denial, — promptly, and without delay, — conformably to the laws.

12. No person shall be held to answer for any crime or offence, until the same is fully and plainly, substantially and formally, described to him ; or be compelled to accuse or furnish evidence against himself. And every person shall have a right to produce

all proofs that may be favorable to him ; to meet the witnesses against him face to face, and be fully heard in his defence, by himself, or his counsel, at his election. And no person shall be arrested, imprisoned, or despoiled or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers or the law of the land.

And the legislature shall not make any law that shall subject any person to a capital or infamous punishment (excepting for the government of the army and navy) without trial by jury.

13. In criminal prosecutions, the verification of facts, in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

14. Every person has a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation ; and if the order, in a warrant to a civil officer, to make search in all suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure. And no warrant ought to be issued but in such cases, and with the formalities prescribed by the laws.

15. In all controversies concerning property, and in all suits between two or more persons, (except in cases in which it has heretofore been otherwise used and practised,) the parties have a right to a trial by jury ; and this method of procedure shall be held sacred, — unless, in cases arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find necessary to alter it.

16. The liberty of the press is essential to security of freedom in a state ; it ought not, therefore, to be restrained in this Commonwealth.

17. The people have a right to keep and to bear arms for the common defence. And as, in time of peace, armies are dangerous to liberty, they ought not to be maintained, without the consent of the legislature ; and the military power shall always be held in exact subordination to the civil authority, and be governed by it.

18. A frequent recurrence to the fundamental principles of the

Constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles in the choice of their officers and representatives, and they have a right to require of their lawgivers and magistrates an exact and constant observance of them, in the formation and execution of all laws necessary for the good administration of the Commonwealth.

19. The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good ; to give instructions to their representatives ; and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

20. The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature ; or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for.

21. The freedom of deliberation, speech, and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

22. The legislature ought frequently to assemble, for the redress of grievances, for correcting, strengthening, and confirming the laws, and for making new laws, as the common good may require.

23. No subsidy, charge, tax, impost, or duties ought to be established, fixed, laid, or levied, under any pretext whatever, without the consent of the people, or their representatives in the legislature.

24. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

25. No person ought, in any case, or in any time, to be declared guilty of treason or felony by the legislature.

26. No magistrate, or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

27. In time of peace, no soldier ought to be quartered in any

house, without the consent of the owner ; and in time of war, such quarters ought not to be made but by the civil magistrate, in manner ordained by the legislature.

28. No person can, in any case, be subjected to law martial, or to any penalties or pains by virtue of that law, (except those employed in the army or navy, and except the militia in actual service,) but by the authority of the legislature.

29. It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws and administration of justice. It is the right of every citizen to be tried by judges as free, impartial, and independent, as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the Judges of the Supreme Judicial Court should hold their offices as long as they behave themselves well ; and that they should have honorable salaries, ascertained and established by standing laws.

30. In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them ; the executive shall never exercise the legislative and judicial powers, or either of them ; the judicial shall never exercise the legislative and executive powers, or either of them : to the end that it may be a government of laws and not of men.

THE
CONSTITUTION
OF THE
UNITED STATES OF AMERICA,

ADOPTED IN CONVENTION, SEPTEMBER 17, A. D. 1787; CARRIED INTO
EFFECT, MARCH 4, A. D. 1789.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION 1.

1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed,

three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

SECTION 3.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION 4.

1. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof: but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5.

1. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither house, during the session of Congress, shall, without

the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6.

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SECTION 7.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress

by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment,) shall be presented to the President of the United States; and, before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be re-passed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.

The Congress shall have power, —

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States :

2. To borrow money on the credit of the United States :

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes :

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States :

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures :

6. To provide for the punishment of counterfeiting the securities and current coin of the United States :

7. To establish post-offices and post-roads :

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries :

9. To constitute tribunals inferior to the Supreme Court :

10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations :

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water :

12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years :

13. To provide and maintain a navy :

14. To make rules for the government and regulation of the land and naval forces :

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions :

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress :

17. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings : — And

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

SECTION 9.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight ; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation, or other direct tax, shall be laid, unless in proportion to the *census* or enumeration herein before directed to be taken.

5. No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another ; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

6. No money shall be drawn from the treasury, but in conse-

quence of appropriations made by law ; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States ; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

SECTION 10.

1. No State shall enter into any treaty, alliance, or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit ; make anything but gold and silver coin a tender in payment of debts ; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws ; and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the treasury of the United States ; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION 1.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected as follows : —

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of Electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress ; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector.

3. [The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each ; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed ; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President ; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote ; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.] *

4. The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes ; which day shall be the same throughout the United States.

5. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President ; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President ; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and

* This article is abrogated, and the substitute for it is found in the 12th Amendment. See page 141.

such officer shall act accordingly until the disability be removed, or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation : —

9. “ I do solemnly swear (or affirm), that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.”

SECTION 2.

1. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States ; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur ; and he shall nominate, and by and with the advice and consent of the Senate shall appoint, ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for; and which shall be established by law : but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECTION 3.

1. He shall from time to time give to the Congress information

of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient ; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper ; he shall receive ambassadors and other public ministers ; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION 4.

1. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1.

1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION 2.

1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority ; to all cases affecting ambassadors, other public ministers, and consuls ; to all cases of admiralty and maritime jurisdiction ; to controversies to which the United States shall be a party ; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens, or subjects.

2. In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the Supreme

Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury ; and such trial shall be held in the State where the said crimes shall have been committed ; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECTION 3.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECTION 1.

1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECTION 2.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor,

but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION 3.

1. New States may be admitted by the Congress into this Union ; but no new State shall be formed or erected within the jurisdiction of any other State ; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States ; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION 4.

1. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion ; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

1. The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress : Provided, that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article ; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

1. All debts contracted, and engagements entered into, before

the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

1. The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON, *President.*

RESOLVED, That the preceding Constitution be laid before the United States in Congress assembled ; and that it is the opinion of this Convention, that it should afterwards be submitted to a convention of delegates, chosen in each State by the people thereof, under the recommendation of its legislature, for their assent and ratification ; and that each convention assenting to and ratifying the same should give notice thereof to the United States in Congress assembled.

RESOLVED, That it is the opinion of this Convention, that as soon as the conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a day on which Electors should be appointed by the States which shall have ratified the same, and a day on which the Electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution ; that after such publication, the Electors should be appointed, and the Senators and Representatives elected ; that the Electors should meet on the day fixed for the election of the President, and should transmit their votes, certified, signed, sealed, and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled ; that the Senators and Representatives should convene at the time and place assigned ; that the Senators should appoint a President of the Senate, for the sole purpose of receiving, opening, and counting the votes for President ; and that after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this Constitution.

By the unanimous order of the Convention.

GEORGE WASHINGTON, *President.*

IN CONVENTION.

September 17, 1787.

SIR : —

We have now the honor to submit to the consideration of the United States in Congress assembled that Constitution which has appeared to us the most advisable.

The friends of our country have long seen and desired that the power of making war, peace, and treaties ; that of levying money and regulating commerce ; and the correspondent executive and

judicial authorities, should be fully and effectually vested in the general government of the Union : but the impropriety of delegating such extensive trust to one body of men is evident. Hence results the necessity of a different organization.

It is obviously impracticable, in the federal government of these States, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved ; and on the present occasion this difficulty was increased by a difference among the several States as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject, we kept steadily in view that which appears to us the greatest interest of every true American, the consolidation of our union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the Convention to be less rigid on points of inferior magnitude, than might have been otherwise expected ; and thus the Constitution which we now present is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every State is not perhaps to be expected ; but each will doubtless consider that, had her interests alone been consulted, the consequences might have been particularly disagreeable or injurious to others : that it is liable to as few exceptions as could reasonably have been expected, we hope and believe ; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

With great respect, we have the honor to be, sir, your Excellency's most obedient and humble servants.

GEORGE WASHINGTON, *President.*

HIS EXCELLENCY, THE PRESIDENT OF CONGRESS.

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ; or abridging the freedom of speech, or of the press ; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner ; nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated ; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger ; nor shall any person be subject for the same offence to be twice

put in jeopardy of life or limb ; nor shall be compelled, in any criminal case, to be a witness against himself ; nor be deprived of life, liberty, or property, without due process of law ; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law ; and to be informed of the nature and cause of the accusation ; to be confronted with the witnesses against him ; to have compulsory process for obtaining witnesses in his favor ; and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved ; and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted

against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.

ARTICLE XII.

1. The Electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of Electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President: a quorum for the purpose shall consist of two thirds of the whole number of Sena-

tors, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

THE END.

